

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**





ORIGINAL

76-7031

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**United States Court of Appeals  
For the Second Circuit**

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THE BOHACK CORPORATION,  
*Plaintiff-Appellant.*

-against-

ALISON MORTGAGE INVESTMENT TRUST,  
*Defendant-Appellee.*

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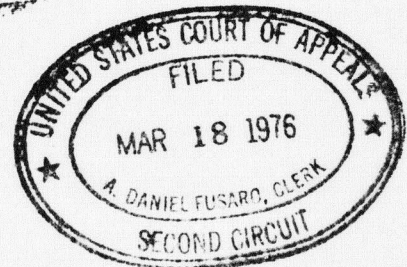
*On Appeal From The United States District  
Court For The Eastern District Of New York*

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**Joint Appendix**

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SHAW AND LEVINE  
*Attorneys for Plaintiff-Appellant*  
770 Lexington Avenue  
New York, N.Y. 10021  
(212) 838-7127

SPENGLER CARLSON GUBAR &  
CHURCHILL  
*Attorneys for Defendant-Appellee*  
280 Park Avenue  
New York, N.Y. 10017  
(212) 682-4444

PAGINATION AS IN ORIGINAL COPY



TABLE OF CONTENTS

	<u>Page</u>
Docket Entries . . . . .	A-1
Order of Judge Weinstein dated December 11, 1975 and filed December 12, 1975 . . .	A-5
Judgment Filed December 16, 1975 . . . . .	A-7
Notice of Motion of Defendant-Appellee dated November 7, 1975 . . . . .	A-8
Affidavit of Robbins P. Bogue, sworn to November 5, 1975, with exhibits . . . . .	A-9
Affidavit of James A. Mercer, Jr., sworn to November 5, 1975, with exhibits . . . . .	A-12
Affidavit of Robbins P. Bogue sworn to December 5, 1975 . . . . .	A-38
Affidavit of William F. Tueting, sworn to December 8, 1975, with exhibit . . . . .	A-76
Complaint with exhibits . . . . .	A-80
Answer with exhibit . . . . .	A-99

DOCKET

# APPEAL

WEINSTEIN.

**ATTORNEYS**

**TITLE OF CASE**

For Printing:

VS.

Shaw and Levine

770 Lexington Avenue

New York, N.Y. 10021

838-7127

### For Defendants:

Spengler Carlson Gubar :

Churchill 230 Park Ave.

New York, N.Y. 1901-

222-1111

SEFES: \$11,398,352

## JURY TRIAL CLAIMED

ON

### ABSTRACT OF COSTS

[illegible]

RECEIPTS, REMARKS, ETC.



640 010

## THE BOHACK CORPORATION vs. ALISON MORTGAGE INVESTMENT TR.

DATE	FILED PROCEEDINGS	AMOUNT REPORTED IN EMOLEMENT RETURN
4-2-74	Complaint filed. Summons issued.	1 JS5
1/26/74	Summons read and filed. Presented.	2
5-9-74	By WEINSTEIN, J. - Order dtd. 5-3-74 extending time for deft to answer by 5-10-74 filed	3
5-14-74	By WEINSTEIN, J. - Order dtd. 6-14-74 extending time for deft to answer to 6-24-74 filed.	4
5-25-74	Deft's motion for summary judgment ret. 7-10-74 @ 9:30 A.M. and memorandum of law and exhibits submitted with notice of motion filed.	5/6
7-5-74	By WEINSTEIN, J. - Order dtd 7-3-74 adjourning motion for summary judgment to 7-29-74 filed.	7
7-11-74	Copy of letter dated 7-2-74 from James Wawro to Jesse Levine, Esq. filed.	8
7-19-74	Affidavit of James Wawro filed.	9
7-19-74	Letter dtd. 7-17-74 from William F. Tueting filed	10
7-19-74	Letter dtd. 7-18-74 from J. Stanley Shaw to Judge Weinstein filed.	11
7-19-74	By WEINSTEIN, J. - Order dtd. 7-18-74 denying motion for an adjournment without prejudice to a renewal on 7-26-74 filed on document # 11	---
7-19-74	Letter dtd. 7-16-74 from J. Stanley Shaw to Judge Weinstein filed	12
7/26/74	Pltff's statement submitted to court rule 26(g) filed.	13
1/26/74	Before WEINSTEIN, J. - Case called - Marked submitted as to receipt of final brief - Decision reserved	
7/29/74	Before Weinstein, J. - Case called for hearing on deft's motion for summary judgment - Marked off	
8-26-74	Pltff's memorandum in opposition to summary judgment filed.	14
8-26-74	By WEINSTEIN, J. - Order dtd 8-23-74 denying deft's motion for summary judgment filed on document #5. Parties notified.	15
9-6-74	Letter from William F. Tueting dtd 8-23-74 filed.	16
9-13-74	Notice of change of firm name of deft filed.	17
9-19-74	ANSWER and counterclaim filed.	
11-27-74	Before CATOGGIO, US MAG - Case called. Conference held. Discovery may be completed by February 25, 1975. Further conference set for March 20, 1975 at 2:00 PM	
12-10-74	Deft's first request for production of documents filed.	18
2-5-75	By WEINSTEIN, J. - Consent to change atty dtd 2-5-75 filed.	19



## THE BOHACK CORP. VS. ALISON MORTGAGE INVESTMENT TRUST

DATE	FILING - PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
3/20/75	Before CATOGGIO, MAG. - Conference held- Respective attys present-Discussions had-Further conference set for 6/10/75 at 2:00 P.M.			
5-3-75	Deft's request to produce filed.			20
5-3-75	Deft's first set of interrogatories filed.			21
8-20-75	By WEINSTEIN, J.--Order dtd 8-18-75 setting status conference for 9-18-75 filed. (Copies mailed to parties)			22
9-16-75	Before CATOGGIO, US MAG)Conference cancelled. No new date set.			
9/18/75	Before WEINSTEIN, J.- Case called- Status conference held and concluded-Motion by depts to be ret. Nov. 13, 1975 at 9:30 A.M.			
11-3-75	Letter from William F. Tueting dtd 10-30-75 filed.			23
11-3-75	By WEINSTEIN, J.- Order dtd 11-2-75 adjourning motion to dismiss to 11-20-75 at 9:30 A.M. filed on document #23			
11-6-75	Copy of letter dtd 10-31-75 to Wm. F. Tueting from Jesse I. Levine filed. (mg)			24
11-6-75	By WEINSTEIN, J.-Order dtd 11-5-75 granting the adjournment until 11-20-75 filed. See document #24.			28
11-11-75	Notice of motion ret 11-20-75 for an order dismissing the complaint filed. (mg)			25
11-11-75	Memorandum of Law of deft in support of motion to dismiss filed.			26
11-20-75	Before WEINSTEIN, J.-Case called & adj'd to 12-9-75.			
11/21/75	XW Letter dated 11/19/75 filed from J. Levine to J. Weinstein			77
11/21/75	By WEINSTEIN, J.- Order dated 11/22/75 filed that this case is adj'd on consent to 12/9/75 (on Doc. #27)			X22X XX
11-24-75	Affidavit of Paula Rezzonico filed re: service of memo.			28
11-24-75	Pltff's memorandum of law filed. (mg)			29
12-9-75	Affidavit of William F. Tueting filed. (mg)			30
12-9-75	Reply memorandum of law of deft Alison Mortgage etc filed.			31
12/9/75	Before WEINSTEIN, J.- Case called- Deft's motion dismissing the complaint, etc. argued and denied-The court said that the roughly one quarter of the shares owned by the deft are owned by N.Y. State and the deft is an incorporated entity under the ruling case law the complaint against the deft is dismissed. Deft to submit an order of judgment.			
12-9-75	Letter from William F. Tueting dtd 12-8-75 filed.			
12-12-75	By WEINSTEIN, J.-Order dtd 12-11-75 that Alison Mortgage Investment Trust have judgment dismissing the complaint			32





ORDER OF JUDGE WEINSTEIN DATED DECEMBER 11, 1975

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- x

THE BOHACK CORPORATION,	:	
	:	
Plaintiff,	:	<u>ORDER</u>
	:	
-against-	:	74 Civ. 518
	:	(JBW)
ALISON MORTGAGE INVESTMENT TRUST,	:	
	:	
Defendant.	:	

----- x

Defendant, Alison Mortgage Investment Trust, having duly moved this Court for an order pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure dismissing the complaint herein on the ground that this Court lacks jurisdiction over the subject matter of this action; and upon reading the notice of motion dated November 7, 1975 with proof of due service thereof on the plaintiff, the affidavits of Robbins P. Bogue, sworn to on November 5, 1975 and December 5, 1975 with exhibits annexed thereto, the affidavit of James A. Mercer, Jr., sworn to on November 5, 1975, with exhibits annexed thereto, and the affidavit of William F. Tueting, sworn to on December 8, 1975, with exhibit annexed thereto, all submitted in support of said motion, and plaintiff having submitted no affidavit in opposition to said motion; and said motion having duly come on before this Court on December 9, 1975 and attorneys for both parties having appeared on that date, and the Court, after oral argument and after due deliberation having rendered its opinion as follows:

"The motion is granted and the complaint is dismissed. The Court finds roughly 1/4 of the shareholders are residents of New York

and the defendant is an unincorporated entity. Under the ruling case law the action must be dismissed since the plaintiff is a corporation organized under the laws of New York."

NOW, upon motion of Messrs. Spengler Carlson Gubar & Churchill, attorneys for defendant, it is

ORDERED, that Alison Mortgage Investment Trust have judgment dismissing the complaint herein on the ground that this Court lacks jurisdiction over the subject matter of this action, and the complaint is hereby dismissed with prejudice; and it is further

ORDERED, that the Clerk of this Court be, and he hereby is, directed to enter judgment dismissing the complaint with prejudice and granting defendant the allowable costs of this action.

Dated: Brooklyn, New York  
December , 1975

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U.S.D.J.



91-3330  
91-3330  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
THE BOHACK CORPORATION,

Plaintiff,

JUDGMENT

-against-

ALISON MORTGAGE INVESTMENT TRUST,

Defendant.

FILED C 518  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

★ DEC 16 1975 ★

-----X  
TIME A.M. ....  
P.M. ....

An order signed by the Honorable Jack B. Weinstein, United States District Judge, having been filed on December 12, 1975, granting the defendant's motion to dismiss the complaint for lack of subject matter jurisdiction and directing the Clerk to enter judgment dismissing the complaint without prejudice or costs, it is

ORDERED and ADJUDGED that the plaintiff take nothing of the defendant and that the complaint is dismissed without prejudice or costs.  
Dated: Brooklyn, New York  
December 15, 1975

*Lewis Angel*  
Clerk

Notion of Motion of Defendant-Appellee dated  
November 7, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----- x

THE BOHACK CORPORATION,	:	
	:	
Plaintiff,	:	<u>NOTICE OF MOTION</u>
	:	
-against-	:	74 Civ. 518
	:	(JBW)
ALISON MORTGAGE INVESTMENT TRUST,	:	
	:	
Defendant.	:	

----- x

S I R S :

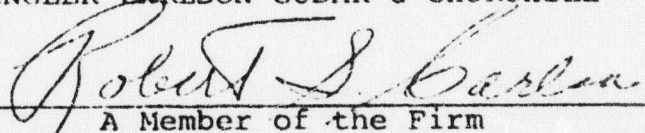
PLEASE TAKE NOTICE, that upon the pleadings and all prior proceedings had herein and upon the affidavits of James A. Mercer, Jr. and Robbins P. Bogue, both sworn to on the 5th day of November, 1975, and exhibits annexed thereto, the undersigned will move this Court at the Courthouse thereof, 225 Cadman Plaza East, Room 1, Brooklyn, New York, on November 20, 1975 at 9:30 a.m. or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure, dismissing the complaint herein on the ground that this Court lacks jurisdiction over the subject matter of this action, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York  
November 7, 1975

Yours, etc.,

SPENGLER CARLSON GUBAR & CHURCHILL

By

  
A Member of the Firm  
Attorneys for Defendant  
280 Park Avenue



Affidavit of Robbins P. Bogue, sworn to November 5, 1975

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

THE BOHACK CORPORATION,

74 Civ. 518 (JBW)

Plaintiff,

- against -

AFFIDAVIT

ALISON MORTGAGE INVESTMENT TRUST,

Defendant.

-----x

STATE OF CALIFORNIA            )  
                                  : ss.:  
COUNTY OF LOS ANGELES        )

Robbins P. Bogue, being duly sworn, deposes and says:

1. I am an Assistant Vice-President of the Corporate Trust Department of Union Bank, 4201 Wilshire Boulevard, Los Angeles, California 90051.

2. At the request of, and under the supervision of, the Trustees of Alison Mortgage Investment Trust, an unincorporated real estate investment trust organized under the laws of the State of California ("Alison"), Union Bank has acted and acts as Alison's Registrar and Transfer Agent. I have been active on the Alison account for several years and I am fully familiar with the facts relating to this motion.

3. As Alison's Transfer Agent, Union Bank maintains a computerized tape of shareholders, which contains the name, address and number of shares for each such shareholder. In addition, Union Bank prints, from such tapes periodic dividend lists of shareholders containing this information. These lists are then retained by Union Bank for later reference.



4. At Alison's request, I have examined the periodic dividend lists for the periods ending December 10, 1973 and June 3, 1974, respectively for the purpose of ascertaining whether any of Alison's shareholders resided in New York on April 2, 1974.


5. Annexed hereto as Exhibit A is a representative list of Alison shareholders who were New York residents on December 10, 1973 and June 3, 1974. My examination discloses that the individuals listed on Exhibit A were both Alison shareholders and New York residents on the date of both reports. In addition, the fact that the individuals have the same account numbers on the dividend lists of both dates means there were no transfer of shares owned by those individuals between the two dates. I would, therefore, conclude that the persons listed on Exhibit A were shareholders of Alison on April 2, 1975 and were New York residents on that date.

6. Furthermore, due to the number of Alison shareholders and the wide distribution of shareholdings, it would be unusual, to say the least, if there were not New York shareholders at any time since 1970. For example, the records of Union Bank disclose that there were 495 shareholders holding 674,861 Alison shares residing in New York on October 31, 1975.

  
\_\_\_\_\_  
Robbins P. Bogue

Sworn to before me this 5th  
day of November, 1975.



  
\_\_\_\_\_  
Notary Public

A-11  
EXHIBIT "A"

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBERS</u>
Ramiro Arratia 19 Grace Ct. Brooklyn, New York	200	122843
Emma F. Blinn 61 Brown Road Scarsdale, New York	200	168970
Max Chazen & Sara Chazen 14 Norwalk Buffalo, New York 14216	50	229686
Pasquale Fabrizo & Lucy Fabrizo 50-28 194th Street Flushing, New York 11365	100	339570
Dorothy Miller 79 Henel Avenue Amherst, New York 10033	400	656172
Rose Schulherr 615 W. 183 Street New York City, New York	100	818635
Grace C. Jones 35 Park Avenue New York City, New York	50	517392
Anythony Myslivecek & Gladys Myslivecek 31 Rowe Place New Hyde Park, New York	100	679506
Rose C. Pfeffer 600 Shore Drive Oakdale, New York	308	727538
Fred H. Herlitz 182 Berry Hill Road Syosset, New York	200	465518



Affidavit of James A. Mercer, Jr. sworn to November 5, 1975

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
THE BOHACK CORPORATION,

Plaintiff,

74 Civ. 518 (JBW)

- against -

AFFIDAVIT

ALISON MORTGAGE INVESTMENT TRUST,

Defendant.  
-----x

STATE OF CALIFORNIA        )  
                                  :    ss.:  
COUNTY OF LOS ANGELES    )

James A. Mercer, Jr., being duly sworn, deposes and says:

1. I am the Secretary of Alison Mortgage Investment Trust ("Alison"), the defendant in the above captioned litigation. I am fully familiar with the facts stated in this Affidavit and submit this affidavit in support of Alison's motion to dismiss the complaint pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure.

2. Alison is an unincorporated real estate investment trust (commonly referred to as a "REIT"), organized as such under the laws of the State of California. It was organized by the execution of a Declaration of Trust on June 17, 1969, a true copy of which, as recorded in the office of the County Recorder of Los Angeles, California, is annexed hereto as Exhibit "A".

3. Alison was organized pursuant to Cal. Corp. Code Sec. 23000 in compliance with the provisions of Subchapter M of the Internal Revenue Code (I.R.C. Sec. 865ff). Pursuant to Cal. Corp. Code Sec. 23002, a permit was granted to Alison on October 20, 1969, which, under California law, is conclusive



evidence of Alison's status as a real estate investment trust. A true copy of such permit is annexed hereto as Exhibit "B".

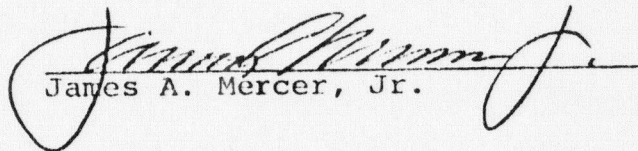
4. Alison has approximately 2,339,417 shares of beneficial interest issued and outstanding at this time.. All of its shares of beneficial interest are listed on the New York Stock Exchange and are freely transferable, subject to the right of the Trustees to restrict such transferability in certain instances, e.g., to insure compliance with Sections 856(a)(5) or (6) of the Internal Revenue Code. (See paragraph 6.8 of the Declaration of Trust).

5. The Trustees of Alison have retained and designated pursuant to the provisions of the Declaration of Trust the Union Bank, 4201 Wilshire Boulevard, Los Angeles, California 90051 as the Registrar and Transfer Agent of Alison and Union Bank has maintained lists of holders of shares of beneficial interest of Alison since October 29, 1969.

6. As one would expect with a REIT as large and widely-held as Alison, the accompanying affidavit of Robbins P. Bogue, Assistant Vice-President of Union Bank, discloses that several of Alison's shareholders are residents of the State of New York.

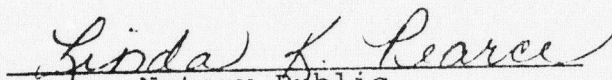
7. I am advised by counsel that, since Alison is an unincorporated association and not a corporation under California law, 28 U.S.C. Sec. 1332(c) is inapplicable and diversity of citizenship under 28 U.S.C. Sec. 1332 would be present in this action only if none of Alison's shareholders are residents of

New York State. Alison does have (and did have on April 2, 1974), numerous New York shareholders.

  
James A. Mercer, Jr.

Sworn to before me this 5th  
day of November, 1975.



  
Notary Public



## EXHIBIT A

## DECLARATION OF TRUST

## ALISON MORTGAGE INVESTMENT TRUST

This Declaration of Trust is made this 17th day of June, 1969, by the persons whose names appear at the end of this Declaration of Trust, as Trustees.

The Trustees do hereby form a trust and do hereby agree to hold in such trust any and all property, real, personal or otherwise, which may be conveyed or otherwise transferred to the trust or them as Trustees hereunder and all rents and profits therefrom for the benefit of the Shareholders hereinafter described, subject to the terms and conditions hereinafter set forth.

## ARTICLE A

## THE TRUST

**A.1 Name.** The name of the trust is ALISON MORTGAGE INVESTMENT TRUST (hereinafter referred to as the "Trust"). Unless otherwise specifically provided herein, and as far as practicable, the Trust's affairs will be managed by the Trustees and all instruments and documents will be executed by the Trustees on behalf of and in the name of the Trust, or in their names as Trustees of this Trust.

**A.2 Nature of Trust.** This Trust is a business trust for purposes of real estate investment organized under the laws of the State of California. It is intended that such trust shall qualify as a "real estate investment trust" under the provisions of Sections 856-858 of the Internal Revenue Code of 1954, as amended, and the Regulations issued thereunder (hereinafter collectively referred to as the "Internal Revenue Code"). Beneficial interest in the trust shall be divided into transferable shares, \$1 par value per share, (the "Shares"), evidenced by certificates. This Trust is not intended to be and shall not be deemed to be a general partnership, limited partnership, corporation, joint venture, joint stock company or joint stock association, nor shall any Trustee or the holder of any of the Trust's Shares for any purpose be or be deemed to be a partner or a member of an association or joint venture. The relationship of holders of the Shares (the "Shareholders") shall be solely as beneficiaries of this Trust.

**A.3 Definitions.** The terms defined in this section shall, whenever used in this Declaration, have the respective meanings hereinafter specified, unless the context otherwise requires. In this Declaration, words in the singular number include the plural and those in the plural number include the singular.

(a) **Adviser.** "Adviser" shall mean any corporation, partnership, trust, other entity or person employed by the Trustees under Article D hereof.

(b) **Affiliate.** "Affiliate" shall mean any person in which or with whom any person is interested by reason of being a director, officer, partner, trustee or owner, directly or indirectly, of more than 1% of the outstanding capital stock or other ownership interests of such person.

(c) **Appraisal.** "Appraisal" shall mean the market value as of the date of the appraisal of Real Property in its existing state or in a state to be created as determined by the Trustees or by such other person who in the sole judgment of the Trustees is properly qualified to make such a determination.

(d) **Construction Loans.** "Construction Loans" shall mean Mortgage Loans incurred to finance all or part of the cost of acquiring and improving land and the construction of dwellings, buildings and similar improvements thereon.

(dd) **Cash Assets** - "Cash Assets" shall mean evidences of short term deposits in, or obligations of, banking institutions and savings institutions which are members of the Federal Deposit



*Insurance Corporation or the Federal Home Loan Bank System, commercial paper if issued by United States corporations having a maturity of not more than 180 days from date of purchase by the Trust, and short term interests in First Mortgage Loans or pools of First Mortgage Loans (or indebtedness secured by First Mortgages or pools of First Mortgages) and having a maturity of not more than 180 days from date of purchase by the Trust.*

(e) *Conventional Loans.* "Conventional Loans" shall mean Permanent Loans which are not insured by the FHA or guaranteed by the VA.

(f) *Development Loans.* "Development Loans" shall mean Mortgage Loans incurred to finance all or part of the cost of acquiring and improving vacant land and developing it into a site or sites suitable for the construction of dwellings, buildings and similar improvements or suitable for other residential, commercial, industrial or public uses.

(g) *Declaration.* "Declaration" shall mean this Declaration of Trust and all amendments or modifications thereof.

(h) *FHA.* "FHA" shall mean the Federal Housing Administration and any successors thereto.

(i) *FHA Loans.* "FHA Loans" shall mean Mortgage Loans which are insured under the provisions of the National Housing Act of 1934, as amended.

(j) *First Mortgages.* "First Mortgages" shall mean Mortgages which take priority or precedence over all other charges or encumbrances upon the same Real Property and which must be satisfied before such other charges are entitled to participate in the proceeds of any sale. *Such mortgages may be upon a lessee's interest in Real Property.* Such priority shall not, however, be deemed to be abrogated by liens for taxes or assessments which are not due or (if due) remain payable without penalty, contracts (other than contracts for repayment of borrowed moneys), or leases, mechanic's and materialman's liens for work performed and materials furnished which are not in default or are in good faith being contested and other claims normally deemed in the local jurisdiction not to abrogate the priority of a First Mortgage.

(k) *First Mortgage Loans.* "First Mortgage Loans" shall mean Mortgage Loans secured or collateralized at the time of acquisition thereof by the Trust by First Mortgages.

(l) *Government Securities - "Government Securities"* shall mean obligations of the United States Government or agencies thereof; obligations of a State or Territory of the United States of America or any agencies thereof; or obligations of any national mortgage association, such as the Federal National Mortgage Association, or of any quasi-governmental agency approved by the Trustees.

"(ll) *Invested Assets.* 'Invested Assets' shall mean the book value of the Trust's assets invested in Mortgage Loans (including the Trust's portion of closed Mortgage Loans at the principal amount thereof although the same may not have been advanced in their entirety) and other investments described or permitted in Article E of the Declaration of Trust, determined on an accrual basis in accordance with generally accepted accounting principles, but excluding cash, cash items, and Government Securities. In determining book value of depreciable invested assets depreciation shall be calculated on a straight line basis over the useful life of such assets, as such useful life shall be used for the purposes of computing depreciation on the Trust's Federal income tax returns."

(m) *Independent Trustees.* "Independent Trustees" are Trustees who are not Affiliates of an Adviser.



(n) *Mortgage Loans*. "Mortgage Loans" shall mean notes, debentures, bonds and other evidence of indebtedness or obligation, whether negotiable or non-negotiable, which are secured or collateralized by Mortgages.

(o) *Mortgages*. "Mortgages" shall mean mortgages, deeds of trust or other security deeds on Real Property or on rights or interests in Real Property.

(p) *Net Assets*. "Net Assets" shall mean the Total Assets of the Trust without deducting therefrom any liabilities of the Trust except that depreciable assets shall be included therein at the lesser of either (i) the book value of such assets on the books of the Trust provided that depreciation shall be calculated thereon on a straight-line basis over the useful life of such assets in accordance with generally accepted accounting principles, and in making such calculations the useful life of such assets shall correspond to the useful life used as the basis of depreciation on the Trust's Federal income tax returns or (ii) the fair market value of such assets in the judgment of the Trustees."

(q) *Operating Expenses*. "Operating Expenses" shall mean all Trust expenses except:

(i) Interest and discounts;

(ii) Taxes;

(iii) Reasonable sales commission for disposition of property;

(iv) Payments to independent contractors, agents or advisers other than the Adviser;

(v) Expenses connected directly with the listing of securities of the Trust on a stock exchange or with the issuance and distribution of any securities at any time, such as underwriting and brokerage fees, taxes, legal and accounting fees, listing and registration fees, and expenses of the type listed in Item 27 in the Registration Statement on Form S-11 filed by the Trust with the Securities and Exchange Commission to register the public offering of its Shares;

(vi) Expenses connected directly with the acquisition, disposition or ownership of Mortgages or Real Property, such as title insurance and abstract expenses and reasonable sales commissions in the disposition of properties; legal fees relating to the acquisition of real estate; maintenance, management, operation, repair and upkeep of trust assets, including the maintenance and protection of the lien of mortgages held by the Trust; costs of foreclosure, mortgage servicing fees and mortgage brokerage commissions;

(vii) Provisions for depreciation, depletion and amortization; and

(viii) Losses on the disposition of assets and provisions for such losses.

(r) *Permanent Loans*. "Permanent Loans" shall mean long term Mortgage Loans which finance or refinance the purchase or ownership of developed sites or improved Real Property.

(s) *Person*. "Person" shall mean and include individuals, corporations, limited partnerships, general partnerships, joint stock companies or associations, joint ventures, associations, consortia, companies, trusts, banks, trust companies, land trusts, business trusts, or other entities.

(t) *Real Property*. "Real Property" shall mean and include land, rights in land, leasehold interests (including but not limited to interests of a lessor or lessee therein), and any building, structures, improvements, furnishings, fixtures and equipment located on or used in connection with land, leasehold interests and rights in land or interests therein but does not include Mortgages, Mortgage Loans, or interests therein.



(u) *REIT Provisions of the Internal Revenue Code.* "REIT Provisions of the Internal Revenue Code" shall mean Part II, Subchapter M of Chapter 1, of the Internal Revenue Code of 1954, as now enacted or hereafter amended or successor statutes and regulations promulgated thereunder.

(v) *Securities.* "Securities" shall mean any stock, shares, voting trust certificates, bonds, debentures, notes, or other evidences of indebtedness or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for, receipts for guarantees of, or warrants, options or rights to subscribe to, purchase or acquire, any of the foregoing.

(w) *Total Assets of the Trust.* "Total Assets of the Trust" shall mean the value of all of the assets of the Trust as such value appears on the most recent monthly balance sheet of the Trust."

(x) *Trustees.* "Trustees" shall mean, as of any particular time, Trustees holding office under this Declaration at such time, whether they be the Trustees who are signatories hereto or additional or successor Trustees but shall not include the Shareholders or the officers, representatives or agents of the Trust unless any such person is also serving as a Trustee.

(y) *VA.* "VA" shall mean the Veteran's Administration and any successors thereto.

(z) *VA Loans.* "VA Loans" shall mean Mortgage Loans which are guaranteed under the provisions of the Servicemen's Readjustment Act of 1944, as amended.

## ARTICLE B

### TRUSTEES

**B.1 Number of Trustees.** The number of Trustees shall be fixed from time to time by the vote of two-thirds ( $\frac{2}{3}$ ) of the Trustees then in office, provided, however, that the number of Trustees designated shall not be less than five (5) nor more than fifteen (15). The initial Trustees shall be the signatories hereto."

**B.2 Term of Office.** Each Trustee who is a signatory to this Declaration or is appointed prior to the first annual meeting of the Shareholders shall hold office until such meeting and until his successor is elected and qualifies. Thereafter, each Trustee shall serve until the next annual meeting of Shareholders and until his successor is elected and qualifies. There is no limitation on the re-election of Trustees or the subsequent election of a former Trustee. Notwithstanding the foregoing, a Trustee's term of office shall automatically terminate upon his bankruptcy, incompetency, incapacity, death, removal or resignation.

**B.3 Qualifications.** Any individual with full legal capacity over the age of twenty-one (21) may be elected as a Trustee and, upon execution of an agreement to act under this Declaration, said person shall be qualified as a Trustee.

**B.4 Vacancies.** If all or any of the Trustees cease to be Trustees, whether by reason of bankruptcy, incompetence, death, removal or resignation, the Trust shall not terminate. Vacancies (including vacancies by increase in the number of Trustees) may be filled by the remaining Trustee or a majority of the remaining Trustees or (if there be no Trustee still in office) by the vote of the holders of a majority of Shares. Immediately upon such appointment, the Trust property shall vest in the new Trustee or Trustees jointly with the remaining Trustees."

**B.5 Officers.** The Trustees shall elect as principal officers of the Trust a president and secretary who may (but need not) be Trustees. The president shall have the power to appoint such additional



officers and agents as he may deem proper, with such duties, powers and responsibilities as the Trustees may from time to time permit by provision in the By-Laws of the Trust. The president and secretary shall have such additional duties, powers and responsibilities as the Trustees may, from time to time, delegate to them. All officers (whether elected by the Trustees or appointed by the president) shall serve at the pleasure of the Trustees and may be removed by the Trustees (or by the president if he appointed such officer) at any time and for any reason whatsoever.

**B.6 Compensation and Other Remuneration.** The Trustees shall be entitled to receive such reasonable compensation for their services as Trustees as they may determine from time to time. The Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include, without limitation, services as an officer of the Trust, legal, accounting or other professional services, or services as a broker, transfer agent, or underwriter, whether performed by a Trustee or any person affiliated with a Trustee.

**"B.7 By-Laws.** By-Laws providing for the operation of the Trust and defining the duties of officers, employees and other persons may be adopted, amended or terminated from time to time by the Trustees."

**"B.8 Resignation, Removal and Death of Trustees.** A Trustee may resign at any time by giving written notice in recordable form to the remaining Trustees at the principal office of the Trust. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice without the need for prior accounting. A Trustee may be removed at any time with or without cause by the vote of the holders of a majority of the Shares then entitled to vote thereon or may be removed at any time with cause by a majority of all remaining Trustees. If a Trustee dies, is declared incompetent, becomes physically incapable of discharging his obligations as Trustee or is adjudicated a bankrupt, he shall thereupon cease to be a Trustee. Upon the resignation or removal of any Trustee, or his otherwise ceasing to be a Trustee, he shall execute and deliver such documents as the remaining Trustees may require for the conveyance of any Trust property held in his name, shall account to the remaining Trustees as they may require for all property which he holds as Trustee and shall thereupon be discharged as Trustee. Upon the incapacity, incompetence or death of any Trustee, his legal representative shall perform the acts set forth in the preceding sentence and the discharge mentioned therein shall run to such legal representative and to the incapacitated Trustee or the deceased Trustee, as the case may be."

**"B.9 Meetings.** An annual meeting of Trustees shall be held without notice immediately after and at the same place as the annual meeting of Shareholders. In addition, the Trustees shall have such regular meetings at such times and in such places as shall be set forth, from time to time, in the By-Laws of the Trust. Special meetings of the Trustees may be called by the president, the secretary or a majority of the Trustees. Such special meetings shall be held at such place and at such time as may be specified in the notice of meeting. Notice of meetings shall be given as set forth in the Bylaws of the Trust."

**"B.10 Actions by Trustees.** The Trustees may act with or without a meeting. A quorum for all meetings of the Trustees shall be a majority of the Trustees then in office. Unless specifically provided otherwise in this Declaration, any action of the Trustees may be taken at a meeting by a majority vote of those present at the meeting or without a meeting by written consent of all of the Trustees then in office. Any agreement, deed, mortgage, lease or other instrument or writing executed by one or more of the Trustees or by any authorized person shall be valid and binding upon the Trustees and upon the Trust when authorized by action of the Trustees or by the By-Laws of the Trust."

**B.12 Executive Committee.** The Trustees may appoint an Executive Committee of two (2) or more Trustees to whom the Trustees may delegate some or all of their powers as set forth herein as



the Trustees may deem expedient, except as otherwise herein provided and subject to the overall responsibility of the Trustees to supervise the Trust and its operations.

**B.13 Report.** Within one hundred twenty (120) days following each fiscal year of the Trust, the Trustees shall cause an annual report of the Trust including a statement of income and expenses and a balance sheet to be prepared and the same shall be certified by an independent certified public accountant. Such report shall meet the requirements of all governmental authorities and agencies, as well as stock exchanges on which the shares may then be listed. A copy of such annual report shall be delivered to each Shareholder as soon as practicable after the end of each fiscal year. In addition, following the close of the first full quarter of the first complete fiscal year of the Trust, and following the close of each fiscal quarter thereafter (except the fourth quarter), the Trustees shall furnish to the Shareholders within ninety (90) days an unaudited report for such quarter setting forth income and expenses of the Trust for such fiscal quarter and such other information regarding the Trust as the Trustees may deem appropriate or proper.

**B.14 Ownership of Shares.** Any Trustee, officer or agent of the Trust may acquire, hold and sell Shares for his personal account, either in his individual name or otherwise, or in conjunction with any other person or as a member of any firm, association, partnership or other entity without being disqualified as a Trustee, officer or agent for such reason.

## ARTICLE C

### TRUSTEES' POWERS

**C.1 General.** The Trustees shall, except as otherwise specifically provided herein, have without further or other authorization, free from any power or control of Shareholders, full, absolute and exclusive power and authority over the assets and property of the Trust to the same extent as if the Trustees were the sole owners of same. The Trustees shall have the right in their sole judgment and discretion to undertake all activities necessary or desirable to carry out the purposes of the Trust and to conduct the business of the Trust. All presumptions in the construction of this Trust shall be in favor of the Trustees and the grant of powers and authority to the Trustees. In addition to and not in limitation of the general powers set forth herein, the Trustees shall have the specific powers set forth below.

**C.2 Specific Power and Authority.** Subject only to the express limitations contained in this Declaration and in addition to any powers and authority conferred by this Declaration or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Shareholders shall have and may exercise at any time and from time to time the following powers and authority (which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper):

(a) To retain, invest and reinvest the capital or other funds of the Trust in Real Property or personal property of any kind, all without regard to whether any such property is authorized by law for the investment of trust funds and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the Trust assets and property and to increase the capital of the Trust at any time by the issuance of additional Shares for such consideration as they deem appropriate.

(b) For such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Shares or through the issuance of notes, debentures, bonds or other obligations of the Trust and hold for investment the entire or any participating interest in notes, bonds or other obligations which are secured by Mortgages. In



connection with any such investment, purchase or acquisition, the Trustees shall have the power to acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of Real Property; to invest in loans secured by the pledge or transfer of mortgage obligations; to develop, operate, pool, unitize, grant production payments out of or lease or otherwise dispose of mineral, oil and gas properties and rights.

(c) To sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any and all of the Trust assets and property by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or the Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust.

(d) To issue Shares, bonds, debentures, notes or other evidences of indebtedness which may be secured or unsecured and may be subordinated to any indebtedness of the Trust and may be convertible into Shares and which may include options, warrants and rights to subscribe to, purchase or acquire any of the foregoing, to such persons for such cash, property or other consideration (including Securities issued or created by, or interests in any person) at such time or times and on such terms as the Trustees may deem advisable and to list any of the foregoing Securities issued by the Trust on any securities exchange and to purchase or otherwise acquire, hold, cancel, reissue, sell and transfer any of such Securities.

(e) To enter into leases, contracts, obligations, and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term.

(f) To borrow money and give negotiable or non-negotiable instruments therefor; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the Trust assets or property, or any portion thereof to secure any of the foregoing.

(g) To lend money, whether secured or unsecured.

(h) To create reserve funds for any purpose.

(i) To incur and pay out of the Trust Estate any charges or expenses, and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the business of the Trust, including without limitation taxes and other governmental levies, charges and assessments, of whatever kind or nature, imposed upon or against the Trustees, the Trust or any of its property in connection with the Trust hereby created, and for the foregoing purposes to prepare, execute and file, or to cause to be prepared, executed and filed, such returns, and to take such action as may be necessary or desirable.

(j) To deposit funds of the Trust in banks, trust companies, savings and loan associations and other depositories, whether or not such deposits will draw interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including any one or more Trustees, officers, agents or representatives) as the Trustees may determine.

(k) To possess and exercise all the rights, powers and privileges appertaining to the ownership of any Mortgages or Securities, issued or created by, or other interests in, any person, which may from time to time form part of the assets or property of the Trust, to the same extent that an individual might, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may



be for meetings or action generally or for any particular meeting or action, and may include the exercise of discretionary powers.

(l) To cause to be organized or assist in organizing any person under the laws of any jurisdiction to acquire on behalf of the Trust any property or to carry on any business in which the Trust may directly or indirectly have any interest, and to sell, rent, lease, hire, convey, negotiate, assign, exchange or transfer all or any portion of the assets or property of the Trust to or with any such person in exchange for Securities thereof or otherwise, and to lend money to, subscribe for the Securities of, and enter into any contracts with, any such person in which the Trust holds or is about to acquire Securities or any other interest.

(m) To enter into joint ventures, general or limited partnerships and any other lawful combinations or associations.

(n) To engage or employ any persons (including, subject to the provisions of Sections F.7 and F.8, any Trustee or officer and any person in which any Trustee or officer is directly or indirectly interested or with which he is directly or indirectly connected) as agents, representatives, employees, or independent contractors (including without limitation, real estate advisers, investment advisers, transfer agents, registrars, underwriters, accountants, attorneys at law, real estate agents, managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such person may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons.

(o) To determine, subject to any applicable REIT Provisions of the Internal Revenue Code, whether moneys, Securities or other assets received by the Trust shall be charged or credited to income or capital or allocated between income and capital, including the power to amortize or fail to amortize any part or all of any premium or discount, to treat any part or all of the profit resulting from the maturity or sale of any asset whether purchased at a premium or at a discount, as income or capital, or apportion the same between income and capital, to apportion the sales price of any asset between income and capital, and to determine in what manner any expenses or disbursements are to be borne as between income and capital, whether or not in the absence of the power and authority conferred by this subsection such moneys, Securities or other assets would be regarded as income or as capital or such expense or disbursement would be charged to income or to capital; to treat any dividend or other distribution on any investment as income or capital or apportion the same between income and capital; to provide or fail to provide reserves for depreciation, amortization or obsolescence in respect of all or any part of the Trust Estate subject to depreciation, amortization or obsolescence in such amounts and by such methods as they shall determine; and to determine the method or form in which the accounts and records of the Trust shall be kept and to change from time to time such method or form.

(p) To determine, subject to any applicable REIT Provisions of the Internal Revenue Code, from time to time, the value of all or any part of the assets and property of the Trust and of any services, Securities, property or other consideration to be furnished to or acquired by the Trust, and from time to time to revalue all or any part of same in accordance with such appraisals or other information as are, in the Trustees' sole judgment, necessary and/or satisfactory.

(q) To collect, sue for, and receive all sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compound, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, controversies, demands or other litigation relating to the Trust, the assets of the Trust or the business of the Trust, to enter into agreements therefor, whether or not any suit is commenced or claim accrued or asserted and, in advance of and controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof.



(r) To renew, modify, release, compromise, extend, consolidate, or cancel, in whole or in part, any obligation to or of the Trust.

(s) To purchase and pay for out of the assets of the Trust insurance contracts and policies insuring the Trust and its property against any and all risks which the Trustees deem appropriate, and insuring the Trust and/or any or all of the Trustees, the Shareholders or officers against any and all claims and liabilities of every nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, Shareholders, or officers.

(t) To cause legal title to any of the assets or property of the Trust to be held by and/or in the name of the Trustees, or except as prohibited by law, by and/or in the name of the Trust or one or more of the Trustees or any other person, on such terms, in such manner, with such powers in such person as the Trustees may determine, and with or without disclosure that the Trust or Trustees are interested therein.

(u) To adopt a fiscal year for the Trust, and from time to time to change such fiscal year.

(v) To adopt and use a seal (but the use of a seal shall not be deemed to be required by this Declaration for the execution of instruments or obligations of the Trust).

(w) To appoint a corporation authorized under the laws of the United States or of any State to administer trusts as the depository of any or all instruments filed with or as part of the Trust's records, and at any time to revoke its appointment by a signed instrument delivered to it, with or without the appointment of a successor depository. While any depository is acting, copies of any instrument deposited with it and certified by the depository to be correct, and certificates of the depository stating who the Trustees are at any time, may be relied upon without inquiry as sufficient evidence of those facts by any person or corporation dealing with the Trustees or the Trust.

To do all other such acts and things as are incident to the foregoing, and to exercise all powers which are necessary or useful to carry on the business of the Trust, to promote any of the purposes for which the Trust is formed, and to carry out the provisions of this Declaration.

## ARTICLE D

### ADVISER

**D.1 Employment of Adviser.** Although the Trustees are responsible for implementing the general policies of the Trust established herein, for formulating and establishing other policies not in conflict with the policies and other provisions set forth herein and generally for supervising the business of the Trust, the Trustees are not personally required to conduct the business of the Trust and, consistent with their ultimate responsibility set forth herein, the Trustees have the power to employ and contract with any person (including one or more of themselves or any corporation, partnership, or trust with which or in which one or more of them may be Affiliates) to provide investment advice and management, administrative and related services as the Trustees may deem necessary or proper for the transaction of the business of the Trust. Such person shall be herein referred to as the "Adviser" and the Trustees may grant or delegate such authority to the Adviser as the Trustees may in their sole discretion deem necessary or desirable without regard to whether such authority is normally granted or delegated by trustees.

The Trustees shall, subject to Section D.5, have the power to determine the terms of compensation of the Adviser or any other person or persons whom they may employ or with whom they may contract; provided, however, that any agreement or contract with any Trustee or any Affiliate of a Trustee shall be valid only if made, ratified or approved by a majority of the other Trustees after disclosure of such relationship.



## ARTICLE E

## INVESTMENT POLICIES

**E.1 General Policy and Investment Powers.** It shall be the policy of the Trustees to acquire its investments for not in excess of their fair market value giving due consideration to prevailing interest rates. The Trustees shall have the power to invest the assets of the Trust in First Mortgage Construction and Development Loans, First Mortgage Permanent Loans, other First Mortgage Loans, wrap-around loans and (subject only to the 10% limitation set forth in Section E.4(i) and, if a gap loan, to the limitation in Section E.4(g)) other loans secured by junior liens, and in Real Property including the development thereof, provided that the price that the Trust pays for improved or unimproved land shall not exceed the value thereof as determined by the Trustees (or by independent qualified appraisal if a transaction subject to Section F.8) and provided that the aggregate purchase price of unimproved Real Property not part of a current development program held at any time (other than Real Property acquired as a result of foreclosure or proceedings in lieu of foreclosure) does not exceed 10% of Total Assets at such time. In addition, provided the aggregate amount (excluding cash, Cash Assets and Government Securities) does not then exceed twenty percent (20%) of the Total Assets of the Trust, the Trustees may also invest in the ownership or participate in the ownership of:

- (a) Any corporation, partnership or other entity principally involved in owning, developing, financing, improving, operating or managing Real Property;
- (b) Securities with respect to any such corporation, partnership or other entity;
- (c) Any other investment set forth in Section E.4.

The restrictions set forth in this Section E.1 shall not, however, apply to an interest acquired by the Trust in connection with a Mortgage Loan where no consideration other than the making of such loan was given by the Trustees.

**E.2 Development and Construction Loans.** It shall be the policy of the Trustees to invest the assets of the Trust primarily in entire or participating interests in First Mortgage Loans which are:

- (a) Development Loans having an original term generally not exceeding three (3) years in an amount not exceeding seventy-five percent (75%) of the value of the real property after completion of the development financed by such loan as such value is determined by FHA, VA or other Appraisal; or
- (b) Construction Loans having an original term generally not exceeding two (2) years, if secured by a lien on single-family residential property, or four (4) years if secured by a lien on other property, in an amount not exceeding eighty-five percent (85%) of the value of the Real Property together with improvements located on the property which are to be subject to the lien, as such value is determined by FHA, VA or other Appraisal.

**E.3 Additional Loan Investments.** At such time as the Trustees may deem proper, in addition to First Mortgage Development Loans and First Mortgage Construction Loans, the Trustees may invest in entire or participating interests in loans which are:

- (a) Conventional First Mortgage Permanent Loans and other First Mortgage Loans bearing interest (after adjustment for any premiums and discount) at a rate not less than the maximum rate on new FHA Loans and in an amount not exceeding eighty-five percent (85%) of the value of the Real Property securing such loan, as such value is determined by FHA, VA, or other Appraisal;



## (b) FHA and VA First Mortgage Loans;

(c) Loans commonly known as "wrap-around loans" which are made to provide additional financing without disturbing the existing First Mortgage Loan, provided, however, that the total of the funds provided by any one wrap-around loan plus the unpaid balance of the existing loan will not exceed *eighty-five percent (85%) of the value of the Real Property securing such loan, as such value is determined by FHA, VA, or other Appraisal*. The Trust may invest an amount equal to not more than 5% of its Total Assets in wrap-around loans made to finance improvements or additional improvements to real property under circumstances in which the value of the property (and improvements if improved) prior to the improvements to be financed would not comply with the said foregoing limitation. In such event, the amount of funds provided by any wrap-around loan made for such purpose shall be subject to the percent limitation on Construction Loans set forth in paragraph (b) of Section E.2.

**E.4 Other Permitted Loans and Investments.** To the extent that the Trust has assets not invested in accordance with the foregoing sections of this Article E, the Trustees may employ such assets by investing them in:

(a) Obligations of the United States Government or agencies thereof;

(b) Obligations of any State or Territory of the United States of America or any agencies thereof;

(c) Evidences of deposits in, or obligations of, banking institutions and savings institutions which are members of the Federal Deposit Insurance Corporation or of the Federal Home Loan Bank System;

(d) Shares of other real estate investment trusts to the extent permitted by the REIT Provisions of the Internal Revenue Code and of a type not prohibited by Section E.5 hereof;

(e) Shares of ownership in corporate or other entities to the extent permitted by the REIT Provisions of the Internal Revenue Code;

(f) Loans generally known as "warehousing loans" which are collateralized by an assignment, pledge or transfer of loans or other investment assets of any type which the Trustees are authorized to invest in hereunder and subject to any limitations applicable to the type of investment;

(g) Loans commonly known as "gap loans" which are made at the time a Construction Loan is placed to fill the gap before the occupancy and other conditions precedent to the funding or the permanent loan are fulfilled; provided, however, that at the time any such loan is placed, the aggregate of such loans shall not exceed 5% of the Total Assets of the Trust.

(h) Any other investments which will not result in disqualification of the Trust as a real estate investment trust under the REIT Provisions of the Internal Revenue Code or not otherwise specifically prohibited herein; and

(i) Obligations secured by Mortgages other than First Mortgages, provided the aggregate of all such obligations held at any time does not exceed 10% of the Trust's Total Assets at such time, provided that (i) such other Mortgages taken as additional collateral for First Mortgage Loans, or as part of the proceeds from the sale by the Trust of Real Property, or as security for the performance of any obligations other than the repayment of money borrowed from the Trust shall not be subject to such 10% limitation, and (ii) this provision shall not be deemed to apply to wrap-around loans.



**E.5 Prohibited Investments and Activities.**

(a) The Trustees shall not invest, *in the aggregate, more than 5% of the Total Assets of the Trust in the following investments:*

(i) Contracts for the sale of real estate; provided, however, that nothing in this Section shall prevent the holding of contracts of sale as additional security for loans made by the Trust and the ownership of such contracts, upon foreclosure of, or realization upon, such security interests.

(b) The Trustees shall not:

(i) Invest in commodities, foreign currencies, or bullion, or invest in chattels other than as required in the day-to-day business of the Trust or in connection with its Mortgage Loans and Real Property;

(ii) Engage in a short sale;

(iii) Issue "redeemable securities" as defined in Section 2(a)(31) of the Investment Company Act of 1940, as amended;

(iv) Engage in trading as compared with investment activities, or engage in underwriting or agency distribution of Securities issued by others, but this prohibition shall not prevent the Trust from selling participations in Mortgage Loans or interests in real estate;

(v) Hold Real Property or other property primarily for sale to customers in the ordinary course of the business of the Trust, but this prohibition shall not be construed to deprive the Trust of the power to sell any property which it owns at any time;

(vi) Issue equity securities of more than one class (other than debt securities convertible into Shares) or issue rights, warrants and options to purchase Shares (except Shares issued to employees of the Trust pursuant to an employee stock option plan adopted or approved by the Shareholders of the Trust) unless issued to all Shareholders ratably or as part of a financing arrangement.

**E.6 Obligor's Default.** Notwithstanding any other provision in this Declaration, when an obligor to the Trust is in default under the terms of any obligation to the Trust, the Trustees shall have the power to pursue any remedies permitted by law which in their sole judgment are in the interest of the Trust and the Trustees shall have the power to enter into any necessary investment, commitment or obligation of the Trust resulting from the pursuit of such remedies or necessary or desirable to dispose of property acquired in the pursuit of such remedies.

**E.7 Government-guaranteed Loans.** *Notwithstanding any restrictions on loan-to-value ratios contained herein, the Trust shall have the power to make loans up to the amount of any guarantee or take-out commitment (or guarantee of such take-out commitments) issued by the FHA, VA, other governmental agency of quasi-governmental institution approved by the Trustees.*

## ARTICLE F

### LIMITATION OF LIABILITY

**F.1 Shareholder Liability.** No Shareholder shall, because of his position as Shareholder, be subject to any personal liability whatsoever to any other person in connection with Trust property or the business of the Trust.

**F.2 Trustee Liability.** No Trustee or officer of the Trust shall be liable to the Trust or to any Shareholder, Trustee or officer thereof for any action or failure to act (including without limitation the failure to compel in any way any former or acting Trustee to redress any breach of trust) except for



his or its willful misfeasance, bad faith, gross negligence or reckless disregard of his duties. Nor shall any Trustee or officer of the Trust be subject to personal liability whatsoever, in tort, contract or otherwise, to any other person, in connection with Trust property or the business of the Trust, save only that arising from his or its own willful misfeasance, bad faith, gross negligence or reckless disregard of its or his duties; and all such other persons shall look solely to the Trust property for satisfaction of claims of any nature arising in connection with the Trust property or the business of the Trust.

**F.3 Express Exculpatory Clauses and Instruments.** As far as practicable, the Trustees shall cause any written instrument creating an obligation of the Trust to include a reference to this Declaration and to provide that neither the Shareholders nor the Trustees nor the officers of the Trust shall be personally liable thereunder and that the other parties to such instrument shall look solely to the assets and property of the Trust for the payment of any claim thereunder or for the performance thereof; provided, however, that the omission of such provision from any such instrument shall not render the Shareholders or any Trustee or officer personally liable nor shall the Trustees or any officer of the Trust be liable to anyone for such omission.

**F.4 Indemnification and Reimbursement of Trustees and Officers.** Any person made a party to any action, suit or proceeding or against whom a claim or liability is asserted by reason of the fact that he, his testator or intestate was or is a Trustee or officer of the Trust shall be indemnified and held harmless by the Trust against judgments, fines, amounts paid on account thereof (whether in settlement or otherwise) and reasonable expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense of such action, suit, proceeding, claim or alleged liability or in connection with any appeal therein, whether or not the same proceeds to judgment or is settled or otherwise brought to a conclusion; provided, however, that no such person shall be so indemnified or reimbursed for any claim, obligation or liability which arose out of the Trustee's or officer's willful misfeasance, bad faith, gross negligence or reckless disregard of duty; and provided further that such person gives prompt notice thereof, executes such documents and takes such action as will permit the Trust to conduct the defense or settlement thereof and cooperates therein. In the event of a settlement approved by the Trustees of any such claim, alleged liability, action, suit or proceeding, indemnification and reimbursement shall be provided except as to such matters covered by the settlement which the Trust is advised by its counsel arose from the Trustee's or officer's willful misfeasance, bad faith, gross negligence, or reckless disregard of duty. Such rights of indemnification and reimbursement shall be satisfied only out of the assets and property of the Trust. The rights accruing to any person under these provisions shall not exclude any other right to which he may be lawfully entitled, nor shall anything contained herein restrict the right of the Trust to indemnify or reimburse such person in any proper case even though not specifically provided for herein, nor shall anything contained herein restrict such right of a Trustee to contribution as may be available under applicable law.

**F.5 No Bond.** No Trustee shall be obligated to give any bond or surety or other security for the performance of any of his duties as Trustee hereunder.

**F.6 Reliance on Opinion.** The Trustees shall be entitled to rely on opinions, certificates or advice of independent certified public accountants or of counsel in making determinations relating to accounting and legal matters, respectively.

**F.7 Right of Trustees and Officers to Own Shares or Other Property and to Engage in Other Business.**

(a) Any Trustee or officer of the Trust may acquire, own, hold and dispose of Shares in the Trust, for his individual account, and may exercise all rights of a Shareholder to the same extent and in the same manner as if he were not a Trustee or officer. Any Trustee or officer may have



personal business interests and activities, including but not limited to the acquisition, syndication, holding, management, operation or disposition, for his own account or for the account of others, of interests in Mortgages, interests in Real Property, or interests in persons engaged in the real estate business, provided the same do not (except as permitted in subsection F.7(b)) directly compete with the actual business being conducted by the Trust. Subject to the provisions of Article D any Trustee or officer may be an Affiliate of, or otherwise may have a direct or indirect interest, in any person who may be engaged to render advice or services to the Trust, and may receive compensation from such person in addition to his compensation as Trustee or officer. None of these activities shall be deemed to conflict with his duties and powers as Trustee or officer.

(b) Nothing in this Declaration shall, even though any such person, interests or activities are directly in competition with the Trust, be deemed

(i) to prohibit a Trustee or officer from acquiring or owning not more than five percent (5%) of any class of outstanding Securities of any publicly owned person whose shares are listed or traded on a national securities exchange or in the over-the-counter market;

(ii) to prohibit a Trustee or officer who is also engaged in rendering legal services from rendering such legal services to any person or from acting as trustee, director, member, adviser, officer or representative of any such person to whom he renders or has rendered such services;

(iii) to require a Trustee or officer to dispose of a personal business interest acquired, or to discontinue personal business activities begun, at a time when he was not a Trustee or officer, or at a time when the same did not directly compete with the business of the Trust (even though the same may have become directly competitive with the Trust's business);

(iv) to prohibit a Trustee or officer from acquiring personal business interests or engaging in personal business activities which:

A. the Trustees (by majority vote or consent, without counting the vote of the interested Trustees) have decided should not be acquired or engaged in by the Trust; or

B. the Trust could not have acquired or engaged in without endangering the qualification of the Trust as a real estate investment trust under the REIT Provisions of the Internal Revenue Code or without violating any provision of this Declaration or applicable law.

**F.8 Transactions With the Trust.** Except as prohibited by this Declaration, and in the absence of fraud, a contract, act or other transaction in which the Trust is directly or indirectly interested shall be valid even though one or more of the Trustees or officers of the Trust are interested in such transaction directly or indirectly or as an Affiliate of a party thereto, provided that (i) such transaction is approved by a majority of the Trustees who are not directly or indirectly interested therein after disclosure to such disinterested Trustees of such interest and the Trustees authorized such contract, act or other transaction by vote sufficient for such purpose without counting the vote of the interested Trustees, [and] (ii) such contract, act or transaction is fair and reasonable as to the Trust and its Shareholders at the time it is authorized, (iii) if the transaction is a purchase or sale of property by the Trust from or to any of such persons, the price at which the property is sold to or purchased by the Trust does not exceed the value thereof as determined by independent qualified appraisal, and (iv) if the transaction is a loan by the Trust to or from any of such persons or a purchase or sale of property by the Trust from or to such persons, any commissions or similar remuneration (except interest and servicing fees in connection with a loan) received from the Trust by a Trustee, the Adviser or any Affiliate of a Trustee or the Adviser shall be deducted from the compensation payable to the Adviser.



This Section shall not prevent the sale to or repurchase from a Trustee of Securities issued by the Trust in connection with a public offering thereof in accordance with a Registration Statement filed with the Securities and Exchange Commission or fees for a so-called "private placement" of such Securities with investors. The Trustees are not restricted by this Section from forming a corporation, partnership, trust or other business association owned by the Trustees or by their nominees for the purpose of holding title to property of the Trust or managing property of the Trust provided the Trustees' motive for the formation of such business association is not for their own enrichment. The Trust shall not, in dealing with any Trustee, investment adviser, officer or employee of the Trust, enter into any transactions contrary to the obligations applicable to the Trust imposed upon fiduciaries by courts of equity.

**F.9 Restriction of Duties and Liabilities.** To the extent that the nature of this Trust as a business trust will permit, the duties and liabilities of Shareholders, Trustees and officers shall in no event be greater than the duties and liabilities of shareholders, directors and officers of a California corporation. The Shareholders, Trustees and officers shall in no event have any greater duties or liabilities than those imposed by applicable law from time to time in effect.

## ARTICLE G

### SHARES OF BENEFICIAL INTEREST

**G.1 Shares.** Beneficial interests hereunder shall be divided into Shares, all of one class, having a par value of \$1.00 per share. All Shares issued hereunder shall be fully paid and non-assessable. The Shares shall be negotiable, represented by certificates (manually signed or bearing the facsimile signature of the proper officers) in form determined from time to time by the Trustees and title thereto and to the Shares represented thereby shall be transferred by assignment and delivery thereof to the same extent and in the same manner as a share certificate of a California corporation. There is no limitation upon the number of shares which may be issued. The Shares shall be issued for such consideration as the Trustees shall determine or by way of share dividend or share split in the discretion of the Trustees. All Shares shall have equal dividend, distribution, liquidation and other rights. Shares reacquired by the Trust shall no longer be deemed outstanding and shall have no voting or other rights unless and until reissued. No Shareholder shall have any preferential, preemptive, appraisal, conversion or exchange right of any kind. Certificates signed by an officer of the Trust who shall cease to be an officer of the Trust may continue to be used nevertheless.

**G.2 Register.** The Trustees shall keep or cause to be kept a register containing the names and addresses of the Shareholders, the number of shares held by each, the certificate numbers representing such Shares, a record of transfers and such other information as the Trustees may from time to time determine.

**G.3 Transfer.** Shares may be transferred on the records of the Trust only by the record holder thereof or his agent duly authorized in writing and only upon delivery to the Trustees or transfer agent of the Trust of the certificate or certificates therefor, properly endorsed or accompanied by duly executed instruments of transfer and accompanied by all necessary documentary stamps, together with such evidence of the genuineness of each such endorsement, execution and authorization and other matters as may be reasonably required. Any person becoming entitled to any Shares in consequence of the death of a Shareholder or otherwise by operation of law shall be recorded as the holder of such Shares and shall receive a new certificate therefor but only upon delivery to the Trustees or transfer agent of the Trust of instruments and other evidence required by the Trustees or the transfer agent to demonstrate such entitlement, the existing certificate for such Shares and all necessary releases from applicable governmental authorities. Upon such delivery the transfer shall be recorded on the register of the Trust and a new certificate for the Shares so transferred shall be issued to the transferee,



and in the case of a transfer of only a part of the Shares represented by any certificate, a new certificate for the residue thereof shall be issued to the transferor. Until such transfer is so recorded, the Shareholder of record shall be deemed to be the holder of such Shares for all purposes hereunder and neither the Trustees nor any transfer agent or registrar nor any officer or agent of the Trust shall be affected by any notice of the proposed transfer.

**C.4 Multiple Ownership.** The Trustees may treat two or more persons holding any share as joint tenants of the entire interest therein unless their ownership is expressly otherwise recorded on the register of the Trust.

**C.5 Duty to Investigate.** The Trustees shall not, nor shall any officer, transfer agent, registrar or other agent of the Trust be bound to ascertain or inquire whether any sale or transfer of any of its Shares or any interests therein which are subject to any trust, express, implied or constructive, or any charge, pledge or equity by any Shareholder is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein except for the persons recorded as such Shareholders.

**C.6 Destroyed Certificate.** In case of the loss, mutilation or destruction of any certificate evidencing Shares hereunder, the Trustees may issue or cause to be issued a new certificate on such terms as they may from time to time determine by resolution or By-Law provision.

**C.7 Dividends and Distributions to Shareholders.** The Trustees may from time to time declare and pay to the Shareholders, in proportion to their respective ownership of Shares, out of the earnings, profits, or surplus of the Trust or any other legal source, such dividends and other distributions as they see fit, but the declaration and payment of such dividends or other distributions and the determination of earnings, profits, surplus or other source available for dividends shall be solely within the discretion of the Trustees and no Shareholder shall be entitled to receive or be paid any dividends or to receive any distribution except as determined by the Trustees in the exercise of said discretion. Any such dividends or other distributions may be made, in whole or in part, in cash, property or other assets of the Trust, or in senior or subordinated, secured or unsecured, evidences of indebtedness of the Trust, as the Trustees may in their sole discretion from time to time determine.

In connection with each dividend or other distribution to Shareholders, the Trustees shall furnish the Shareholders with a statement in writing advising them of the source of the funds so distributed or, if the source thereof has not then been determined, the communication shall so state, and in such event, the statement as to source shall be forwarded to Shareholders not later than sixty (60) days after the close of the fiscal year in which the dividend or other distribution was made.

**C.8 Redemption of Shares.** The Shareholders shall upon demand disclose to the Trustees in writing such information with respect to direct and indirect ownership of Shares as the Trustees deem necessary to comply with the REIT Provisions of the Internal Revenue Code, or to comply with the requirements of any other taxing authority. If the Trustees shall, at any time and in good faith, be of the opinion that direct or indirect ownership of Shares of the Trust has or may become concentrated to an extent which is contrary to the requirements of Section 856(a)(5) and (6) of the Internal Revenue Code, then the Trustees shall have the power (i) by lot or other means which they deem equitable to call for redemption a number of such Shares sufficient, in the opinion of the Trustees, to maintain or bring the direct or indirect ownership of Shares of the Trust into conformity with the requirements of said Section 856(a)(5) and (6), and (ii) to refuse to transfer Shares to any person whose acquisition of the Shares would in the opinion of the Trustees result in a violation of said Section 856(a)(5) or (6). The redemption price shall be equal to the fair market value of the Shares as reflected in the latest bid quotation for the shares (if then traded over-the-counter) or the closing sale price (if then listed on a national securities exchange) on the business day next preceding the date fixed for redemption, or, if



no quotation or closing sale price (as the case may be) for the Shares is available, the fair market value as determined in good faith by the Trustees. From and after the date fixed for redemption by the Trustees, the holder of any Shares so called for redemption shall cease to be entitled to dividends, voting rights and other benefits with respect to such Shares excepting only the right to payment of the redemption price fixed as aforesaid, which redemption price shall be paid when the certificate or certificates representing the Shares redeemed are surrendered to the Trustees. For the purpose of this Section the term "individual" shall be construed as provided in Section 542(a) of the Internal Revenue Code, or any successor provision, and "ownership" of Shares shall be determined as provided in Section 544 of the Internal Revenue Code.

**G.9 Shares deemed Personal Property.** The Shares are personal property and shall confer upon the holder thereof only the rights set forth in this Declaration. The death, insolvency or incapacity of any Shareholder shall not dissolve or terminate the Trust or affect its continuity or give his legal representative or other successor in interest any right whatsoever, whether against or in respect of other Shareholders, the Trustee or the Trust assets or property or otherwise except the sole right to demand and, subject to the provisions of this Declaration and any requirements of law, to receive, a new certificate for shares registered in the name of such appropriate legal representative or other successor in interest in exchange for the certificate held by such Shareholder.

**G.10 Transfer Agent, Dividend Disbursing Agent and Registrar.** The Trustees shall have power to employ one or more transfer agents, dividend disbursing agents and registrars and to authorize them on behalf of the Trust to keep records, to hold and disburse any dividends and distributions, and to have and perform in respect of all original issues and transfers of Shares, dividends and distributions and reports and communications to Shareholders, the powers and duties usually had and performed by transfer agents, dividend disbursing agents and registrars.

## ARTICLE II

### RIGHTS OF SHAREHOLDERS

**H.1 Ownership.** The ownership of all Trust property and the control of the affairs of the Trust are vested exclusively in the Trustees, and the Shareholders shall have no interest therein other than the beneficial interest conferred by their Shares, and they shall have no right to call for any partition or division of any property, profits, rights or interests.

**H.2 Annual Meeting.** There shall be an annual meeting of Shareholders at such time and place as the Trustees may provide in the By-Laws of the Trust. The date of such meeting shall be within six (6) months after the end of each fiscal year, commencing in 1970, and prior to each such meeting there shall be delivered to the Shareholders the annual report described in Section B.13. The annual meeting shall be for the purpose of electing Trustees and conducting such other business as may properly come before the meeting.

**"H.3 Special Meetings.** Special meetings of the Shareholders may be called in accordance with the Bylaws of the Trust."

**"H.4 Notice of Meetings.** Notices of all meetings of the Shareholders shall be given in accordance with the Bylaws of the Trust."

**H.5 Quorum; Vote Required.** A majority of the outstanding Shares entitled to vote at any meeting represented in person or by proxy shall constitute a quorum at any such meeting. Whenever any action is to be taken by the Shareholders, it shall, except as otherwise required by this Declaration

ment shall be acknowledged by one or more of the Trustees executing such instrument and recorded in the office of the County Recorder of Los Angeles County, California, and in the office of the County Recorder or its equivalent in every county in which the Trust is or the Trustees are the record owners of Real Property.

**"I.3 Termination.** The Trust may be terminated at any time by the vote or written consent of a majority of the outstanding Shares entitled to vote thereon. If the Commissioner of Corporations of the State of California has suspended for a period of more than 30 days, or has revoked, a permit issued by him to the Trust under the authority of Section 23002 of the California Corporations Code, or any successor statute from time to time in force, the Trust may be terminated by the vote or written consent of the holders of 10% or more of the outstanding shares.

Upon any termination of the Trust, no further business shall be conducted except insofar as necessary to wind up its affairs. The Trustees shall proceed to wind up the affairs of the Trust and shall have full power so to do until such winding up has been completed. Pursuant to such winding up the Trustees may sell or convert into money the whole of the Trust property or any part thereof and after paying, retiring or providing for the payment of all known liabilities and obligations of the Trust and receiving such releases, indemnities and refunding agreements as they deem necessary, shall divide the proceeds thereof among and distribute in kind, in valuations made by the Trustees which shall be conclusive, all other property then held by them in trust hereunder to the Shareholders ratably according to the number of Shares held by them. In making any sale under the provisions hereof, the Trustees shall have the power to sell by public auction or by private contract and to buy or rescind or vary any contract of sale and to resell without being answerable for loss and, for said purposes, to do all things, including the execution and delivery of instruments, as may be necessary or desirable in connection therewith, provided, however, that any sale or other disposition of more than 50% of the assets (other than in the ordinary course of business) of the Trust shall require the approval (by vote or written consent) of a majority of the Shareholders. The power of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of Trust property may have passed. Following such termination, the Trustees shall thereupon be discharged from all further liabilities and duties hereunder and the rights and interests of all Shareholders shall thereupon cease."

## ARTICLE J

### MISCELLANEOUS

**J.1 Applicable Law.** This Declaration is executed, acknowledged and delivered by the Trustees in the State of California, and the same shall be construed in accordance with the laws of the State of California. This Declaration and any amendments thereto shall, as soon as reasonably possible after execution, be recorded in the office of the County Recorder of Los Angeles County, California, and in all other offices in which such recording may be required from time to time including the office of the County Recorder or its equivalent in any county where Real Property owned by the Trust or the Trustees is located.

**J.2 Principal Office.** The principal office of the Trust shall be in such location in the state of California as the Trustees may from time to time determine. The Trust may have such other offices or places of business as the Trustees may from time to time determine.

**J.3 Captions.** Captions as set forth herein are for convenience only and shall not be referred to for purposes of construing this instrument and shall in no way limit the contents of any portion of this Declaration.



**J.4 Counterparts.** This Declaration and any amendment hereto may be executed in counterparts, each of which shall be deemed to be an original, and such executed counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such counterpart.

**J.5 Binding.** This Declaration and any By-Laws approved by the Trustees shall be binding upon and shall inure to the benefit of the Trustees and their successors, assigns, heirs, distributees and legal representatives, and every Shareholder and his successors, assigns, heirs, distributees and legal representatives.

**J.6 Certificate.** Any certificate signed by any Trustee certifying (i) the number or identity of Trustees, (ii) the due authorization or execution of any instrument, (iii) the form of resolution and/or the vote by which passed at a meeting of Trustees or Shareholders, (iv) the form of any By-Laws adopted by the Trustees, (v) the identity of any officer elected by the Trustees or (vi) the existence or non-existence of any fact or facts which in any manner relate to the affairs of the Trust, shall be conclusive evidence as to the matters so certified.

**J.7 Provisions of the Trust in Conflict with Law and Regulations.** (a) The provisions of this Declaration are severable, and if the Trustees shall determine, upon the advice of counsel, that any one or more of such provisions (the "Conflicting Provisions") are in conflict with the REIT Provisions of the Internal Revenue Code, or with other applicable federal or state laws and regulations, except with respect to the provisions referred to in Paragraph (b) below, the Conflicting Provisions shall be deemed never to have constituted a part of the Declaration; provided, however, that such determination by the Trustees shall not affect or impair any of the remaining provisions of this Declaration or render invalid or improper any action taken or omitted (including but not limited to the election of Trustees) prior to such determination. A certification in recordable form signed by a majority of the Trustees setting forth any such determination and reciting that it was duly adopted by the Trustees, or a copy of this Declaration, with the Conflicting Provisions removed pursuant to such a determination, in recordable form, signed by a majority of the Trustees, shall be conclusive evidence of such determination when lodged in the records of the Trust. The Trustees shall not be liable for failure to make any determination under this Section and nothing in this Section shall in any way limit or affect the right of the Trustees to amend this Declaration as hereinbefore provided.

(b) If any provision of this Declaration giving Shareholders the right to elect and remove Trustees and the right to amend and terminate this Declaration shall conflict with the requirements of the Internal Revenue Code of 1954 and the rules and regulations promulgated thereunder, such provisions shall be deemed to be without force and effect. In the event that any provision relating to the election of Trustees by the Shareholders shall be deemed, by virtue of this Paragraph to be without force or effect, the Trustees then in office shall be deemed to be the qualified and acting Trustees until such time as a successor or successors thereto have been named. If any provision of this Declaration is deemed, by virtue of this Paragraph, to be without force or effect, the Trustees shall, at or before the next meeting of Shareholders, notify the Shareholders of such fact, and shall submit to the Shareholders for their approval or disapproval (by the vote of a majority of those voting) the question whether the rights contained in such provision shall be continued.

(c) If any provision of this Declaration, or any portion thereof, shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and the remaining provisions of this Declaration, together with any partially invalid or unenforceable provision to the extent valid and enforceable shall remain in full force and effect.



## ARTICLE K

## DURATION OF TRUST

Subject to sooner termination in accordance with the provisions of this Declaration, the Trust created hereby shall continue until the expiration of twenty (20) years after the death of the last survivor of the following named persons:

<u>Name</u>	<u>Date of Birth</u>	<u>Parent</u>	<u>Present Address</u>
Emily Strong Miller	August 26, 1961	Gavin Miller	2471 Glendower Place Los Angeles, California
Louise Harphan Miller	April 15, 1965	Gavin Miller	2471 Glendower Place Los Angeles, California
Catherine Schurman Miller	April 15, 1965	Gavin Miller	2471 Glendower Place Los Angeles, California
Milton Evan Beral	May 22, 1967	Harold Beral	2322 French Street Santa Ana, California
Tamaryn Ann Eppinga	July 27, 1967	Peter L. Eppinga	3027 Slayen Way San Diego, California
Cynthia Hodgman	November 30, 1958	Donald Hodgman	1355 Blackstone Road San Marino, California
Donna Hodgman	September 5, 1967	Donald Hodgman	1355 Blackstone Road San Marino, California

IN WITNESS WHEREOF, the undersigned have executed this Declaration of Trust as of the day and year first above written.

\_\_\_\_\_  
Roger M. Alison

\_\_\_\_\_  
Roy Doumani

\_\_\_\_\_  
Herbert W. Kalmbach

\_\_\_\_\_  
Ernest J. Billman

\_\_\_\_\_  
David B. Heyler, Jr.

\_\_\_\_\_  
Oliver A. Folke

\_\_\_\_\_  
Robert L. Unger



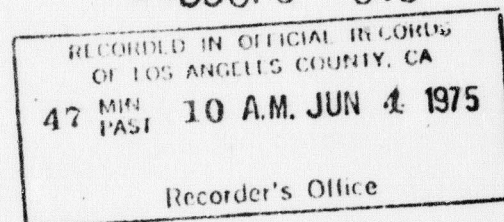
Recording requested by and return to:

Alison Mortgage Investment Trust  
2001 San Joaquin Hills Road  
Newport Beach, California 92660  
Att: J. A. Mercer, Secretary

A-35

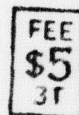
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SIXTH AMENDMENT TO  
DECLARATION OF TRUST

ALISON MORTGAGE INVESTMENT TRUST



WHEREAS, by Declaration of Trust dated June 17, 1969, a trust known as Alison Mortgage Investment Trust (the "Trust") was formed on the terms and conditions therein set forth; and

WHEREAS, Section 1.2 of the said Declaration of Trust provides that the said Declaration of Trust may be amended by the vote or written consent of a majority of the outstanding Shares of Beneficial Interest of the Trust entitled to vote thereon; and

WHEREAS, at a meeting of the holders of the Shares of Beneficial Interest of the Trust duly held on April 21, 1975, the amendments to the Declaration of Trust hereinafter set forth have been approved by a majority of the outstanding Shares of Beneficial Interest of the Trust entitled to vote thereon, in accordance with Section 1.2; and

WHEREAS, a restated Declaration of Trust, incorporating five previous amendments to the original Declaration of Trust dated June 17, 1969, was prepared on or shortly after March 19, 1973 and has already been, or is concurrently herewith being, recorded in the offices of the County Recorders for Orange and Los Angeles Counties, California; and

WHEREAS, it is desired to memorialize the further amendments to the Declaration of Trust hereinafter set forth which were adopted by the holders of the Shares of Beneficial Interest on April 21, 1975;

NOW, THEREFORE, the said Declaration of Trust is amended in the following respects:

1. Section D.5 is hereby amended to read in its entirety as follows:

"D.5 Limitation on Operating Expenses. The annual Operating Expenses of the Trust, including management fees paid to the Adviser but excluding extraordinary, non-recurring items, shall not exceed either of the following limitations:

- (i) One and one-half (1.5%) of the Trust's Average Invested Assets (as hereinafter defined) for such Fiscal Year; or



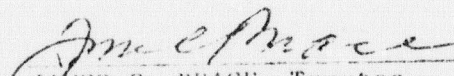
(ii) The greater of (A) one and one-half percent (1.5%) of the Trust's Average Net Assets Less Liabilities (as hereinbelow defined) for such Fiscal Year or (B) twenty-five percent (25%) of the Trust's net income determined in accordance with generally accepted accounting principles after taxes but before deduction of any management fees and before extraordinary non-recurring items or (C) the sum of a Minimum Maintenance Fee for such Fiscal Year plus all other operating expenses of the Trust for such Fiscal Year.

'Average Invested Assets' during any Fiscal Year shall mean the average of the Invested Assets of the Trust at the end of each month during such Fiscal Year. 'Average Net Assets Less Liabilities' during any Fiscal Year shall mean the average of the Net Assets of the Trust at the end of each month during such Fiscal Year less the average of all liabilities of the Trust at the end of each such month. The 'Minimum Maintenance Fee' for any Fiscal Year shall be a management fee to the Adviser in such amount as the Independent Trustees shall approve, in advance, for such Fiscal Year (but subject to increase during such Fiscal Year) as being necessary to provide reasonable compensation to the Adviser for its services to the Trust for such Fiscal Year after a consideration of all factors deemed relevant by the Independent Trustees including but not limited to the expected costs and expenses of the Adviser for such Fiscal Year.

Each contract made with the Adviser shall specifically provide for a refund to the Trust of the amount, if any, by which the Operating Expenses exceed the applicable limitation set forth above."

IN WITNESS WHEREOF, the undersigned Trustees have executed this Sixth Amendment to Declaration of Trust as of the 21st day of April, 1975.

  
ROGER M. ALISON, Trustee

  
JAMES C. BRACE, Trustee

  
ROY DOUMANI, Trustee





EXHIBIT "B"

IN REPLY REFER TO:

FILE NO. 301 1967

Applicant: ALISON MORTGAGE  
INVESTMENT TRUST

PERMIT

THIS PERMIT IS PERMISSIVE ONLY AND DOES NOT CONSTITUTE A  
RECOMMENDATION OR ENDORSEMENT OF THE SECURITIES PERMITTED TO BE ISSUED

ALISON MORTGAGE INVESTMENT TRUST

is hereby qualified to offer, sell and issue the securities described  
in its application filed on June 20, 1969 and any amendments  
and supplements thereto to the date hereof, to the persons described  
in said application, for the considerations, uses and purposes, and  
in the manner set forth in said application. This qualification is  
effective for 12 months from the date hereof.

Dated: Los Angeles, California

OCTOBER 20 1969

ANTHONY R. PIERNO  
Commissioner of Corporations

By David Bow Woo

DAVID BOW WOO  
Corporations Counsel

DBW:svv

CF 500  
LOS ANGELES 90012  
107 SOUTH BROADWAY

SAN DIEGO 92101  
5068 STATE OFFICE BLDG.

SAN FRANCISCO 94103  
1460 MISSION STREET

SACRAMENTO 95814  
1020 N STREET



Affidavit of Robbins P. Bogue sworn to December 5, 1975

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK-----X  
THE BOHACK CORPORATION, :

Plaintiff, :

74 Civ. 518 (JBW)

- against - :

AFFIDAVIT

ALISON MORTGAGE INVESTMENT TRUST, :

Defendant. :

-----X  
STATE OF CALIFORNIA )

SS.:

COUNTY OF LOS ANGELES)

ROBBINS P. BOGUE, being duly sworn, deposes and says:

1. I am an Assistant Vice-President of the Corporate Trust Department of Union Bank, 4201 Wilshire Boulevard, Los Angeles, California 90051. This affidavit is being submitted at the request of Alison Mortgage Investment Trust ("Alison") for use in Alison's motion to dismiss the above-captioned action.

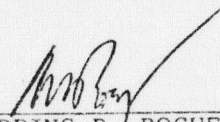
2. As I stated in my affidavit of November 5, 1975, Union Bank is the Registrar and Transfer Agent for Alison, and I have been responsible for the supervision of this account for the past several years. I am fully familiar with the facts stated in this affidavit.

3. I am informed by Alison's attorneys that plaintiff in this action has questioned whether or not there were persons who were both shareholders of Alison and New York residents on April 2, 1974, the date on which, I am informed, this action was commenced. As Exhibit A to my earlier affidavit I submitted a list of ten persons who were Alison shareholders on April 2, 1974 and who, according to the records maintained at Union Bank, resided in New York on that date. This is, as I stated in that



earlier affidavit, in Paragraph 5 thereof, "a representative list of Alison shareholders". It did not purport to be a complete list. Obviously, the last sentence in Paragraph 5 of my earlier affidavit should read "I would, therefore, conclude that the persons listed on Exhibit A were shareholders of Alison on April 2, 1974 and were New York residents on that date."

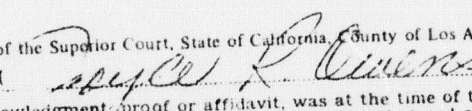
4. In connection with Union Bank's duty as Registrar and Transfer Agent, individual shareholder ledger cards are maintained on a continuing basis for each and every registered shareholder of Alison. These cards contain the complete registration history of every individual who has held shares of Alison. Recently, at the request of the attorneys for Alison, a complete list of persons who were Alison shareholders on April 2, 1974 and who were New York residents on that date was prepared. This list was checked, under my supervision at Union Bank, against the ledger cards for each such individual. Annexed hereto as Exhibit A is a list of 436 persons who, according to these individual shareholder ledger cards, were both Alison shareholders and New York residents on April 2, 1974.

  
ROBBINS P. BOGUE

STATE OF CALIFORNIA  
County of Los Angeles

(General)

I, CLARENCE E. CABELL, County Clerk and Clerk of the Superior Court, State of California, County of Los Angeles, a Court of Record,

having by law a seal, do hereby certify that  whose name is subscribed to the attached acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public IN AND FOR LOS ANGELES COUNTY, duly commissioned and sworn, with the principal place of business or employment in said County, and was/as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments of writing to be recorded in said State, to take depositions and/or affidavits, and to administer oaths or affirmations, in any County in this State and that full faith and credit are and ought to be given to his official acts; that the certificate of such officer is required to be under seal; that the impression of his official seal is not required by law to be on file in the office of the County Clerk. I further certify that I am well acquainted with his handwriting and verily believe that the signature to the attached document is his genuine signature, and further that the annexed instrument is executed and/or acknowledged according to the laws of the State of California.

Executed and the seal of said Superior Court affixed at  
Los Angeles, California, DEC 5 1973, 19.

CLARENCE E. CABELL  
County Clerk and Clerk of the Superior Court  
of California, County of Los Angeles.

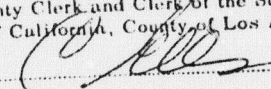
By  Deputy



EXHIBIT A

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Laura Adgate 102 Lynbrook Avenue Point Lookout, N.Y. 11569	30	108427
Sadie K. Adler 441 East 20th Street New York, New York 10010	100	109200
Saul Ainbinder 1445 Shore Parkway Brooklyn, New York 11214	100	110252
Pearl K. Aberli Carousel Lane Shelter Island, N.Y. 11964	100	111320
Robert Alese 166 Elm Drive E Levittown, N.Y. 11756	200	112230
Thomas Alese & Catherine Alese, Joint Tenants 193 Sherry Street East Islip, New York 11730	50	112240
Allen Metal Products Inc. Profit Sharing Tr UA Dec. 19, 1966 c/o Paul Papper 155 Liberty Avenue Brooklyn, New York 11212	400	114900
Diane Lee Almodovar 4 Dunbar Street Staten Island, N.Y. 10308	1	115615
Barney Amato 879 Cranford Avenue Bronx, New York 10466	200	116245
C. Joseph Amodio & Josephine Amodio, Jt. Ten. 164 Unqua Road Massapequa, New York 11758	100	116700



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Ramiro Arratia 19 Grace Ct. Brooklyn, New York 11201	200	122843
Ashbro Corp. c/o Joseph Asher 25 Canterbury Road Great Neck, New York 11021	100	123120
Atwell & Co. c/o United States Trust Co. P.O. Box 456 Wall Street Station New York, New York 10005	2,500	126400
Celia Avner c/o L. Schweiber 66 W. 88th Street Apt. 3-D New York, New York 10024	100	128450
Armand W. Aymong 3380 Homestead Avenue Wantagh, New York 11793	50	128805
David Azorsky 151 Purchase Street Rye, New York 10580	100	129850
Cornell S. Babcock 1227 1st Nat'l Bank Bldg. Utica, New York 13501	100	130193
Bache & Co. Incorporated 100 Gold Street New York, New York 10038	18,028	130520
George E. Bakerian 52 King Street Troy, New York 12180	25	132955
Francis C. Ballway 243 Woodruff Avenue Syracuse, New York 13203	600	137726
Morris Bandlayder 212-04-73rd Avenue Bayside, New York 11364	35	137800
Paul A. Brattini & Christine Barattini, Jt. Ten. 290 6th Avenue New York, New York 10014	50	140096
Benjamin Barris & Irene Barris, Jt. Ten. 2045 Holland Avenue Bronx, New York 10462	100	141038

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Walter M. Bass 565 Broadway Hastings-on-Hudson, N.Y. 10706	200	141860
Betty Becker 185 Kingston Drive Ridge Long Island, N.Y. 11961	300	148935
Richard Becker 6030 Madison Street Brooklyn, New York 11227	50	148940
Philip Beloff 1041 Pugsley Avenue Bronx, New York 10477	200	149400
Maurice Berger & Sylvia Berger, Jt. Ten. 25 Observatory Drive Croton-on-Hudson, N.Y. 10520	200	154700
Susan Bettmann 50 Ethelridge Road White Plains, New York 10605	100	163000
Rita Ellen Biss 590 Willis Avenue Williston Park, New York 11596	100	166660
Bruce Bjorklund Cust. Alison Bjorklund Unif. Gift Min. Act N.Y. Meadow Lane Mill Neck, New York 11765	1	166955
Jeanette Bjorklund Meadow Lane Mill Neck, New York 11765	75	166960
Donald M. Black 6 Montgomery Road Scarsdale, New York 10583	50	167134
Irwin Blefeld & Dorothy J. Blefeld, Jt. Ten. 50 Maple Avenue Cedarhurst, New York 11516	300	168789



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Emma F. Blinn 61 Brown Road Scarsdale, New York 10583	200	168970
Fannie Blumenthal 240 Central Park South New York, New York 10019	100	169660
Blyth Eastman Dillon & Co. Incorporated P.O. Box 12168 Church Street Station New York, New York 10005	1,000	173000
Emma Boehle c/o Chemical Bank N.Y. Trust Co. Dept. A/C 001-271954 Church Street Station New York, New York 10001	100	178197
Ernest Bolan 74 Reade Street New York, New York 10007	100	179570
Marcel L. Brailey & Jeanne Brailey, Jt. Ten. 12 DuPont Avenue White Plains, New York 10605	100	187460
Anthony D. Brescia & Annette M. Brescia, Jt. Ten. 30-29 154th Street Flushing, New York 11354	50	189853
Martin Bressler & Albert Podrid Tr. U/A 12-21-66 F/B/O Bernard Shahn c/o Martin Bressler 90 Broad Street New York, New York 10004	200	189861
Evelyn B. Brewster 106 Orinoco Drive Brightwaters, New York 11718	100	189869
Catherine Brill 717 Harper Drive Endwell, New York 13760	100	190075
Herbert Bronstein 541 Halevy Drive Cedarhurst, New York 11516	500	190215
Harriet E. Bubert Skiippers Lane Orient, New York 11957	100	201210

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Perry Burkett 55 Knolls Crescent Apt. 8K Riverdale, New York 10463	20	202615
Jacqueline Campbell 404 E. 66th Street, Apt. 7G New York, New York 10021	130	214947
Louis Carp 107-19 70th Avenue Forest Hills, New York 11375	100	217941
Carr & Co. 23 Wall Street New York, New York 10015	100	218600
Aida Catino 1 Hardscrabble Circle Armonk, New York 10504	100	221536
Evangelhia Catsouphe 345 East 56th Street New York, New York 10022	300	221546
Cede & Co. Box 20 Bowling Green Station New York, New York 10004	505,215	223700
Dorane R. Celentano 205 Glenmore Street East Williston, New York 11596	600	224050
Dominick Cerasulo 806 East 225th Street Bronx, New York 10466	60	225020
Esther N. Chait 510 W. Lawrence Street Albany, New York 12208	100	227327



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Max Chazen & Sara Chazen, Jt. Ten. 14 Norwalk Buffalo, New York 14216	50	229686
Bert B. Citron 840 Shore Road Long Beach, L.I., N.Y. 11561	100	233568
Irving Citron 840 Shore Road Long Beach, L.I., N.Y. 11561	400	233572
Herbert D. Clark Scenic Garden Dr., Apt. 10-C Wappingers Falls, New York 12590	100	234110
Charles F. Clause & Emily A. Clause, Jt. Ten. 4811 E. Henrietta Road Henrietta, New York 14467	20	234865
A. Bruce Cleveland 200 East 27th Street New York, New York 10016	300	236183
Clara M. Coble 510 East 84th Street New York, New York 10028	500	245325
Helen Cocchi 115-24 Myrtle Avenue Richmond Hill, New York 11418	100	247290
Edward Cohen Cust. Jeffrey Neil Cohen Unif Gift Min Act N.Y. c/o Funny Store 1481 Broadway New York, New York 10036	10	249418
John E. Cohoon & Chloe R. Cohoon, Jt. Ten. 2554 Hyacinth Street Westbury, New York 11590	110	249993
Thomas R. Coleman & Virginia S. Coleman, Jt. Ten. CMR Box 2691 Det 5 Apo, New York 09224	65	255265

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Hilde Collins 8 Kent Road Scarsdale, New York 10583	100	255787
Olga T. Conroy 79 Parkside Drive Point Lookout, New York 11569	200	256046
Leo Cooper & Rose Cooper, Jt. Ten. 184-06 58th Avenue Flushing, New York 11365	150	256825
Goldie Corbeth 149 Miles Avenue Syracuse, New York 13210	35	258005
Valerie J. Corso 1 Fairhaven Mall, Apt. B-87 Mineola, New York 11501	100	260745
Cudd & Co. c/o Chase Manhattan Bank N.A. P.O. Box 1508 Church St. Station New York, New York 10008	100	267101
Ruth Daliendo 8619 116th Street Richmond Hill, New York 11418	100	272001
Dorothy S. Darlington 75 Victor Herbert Road Lake Placid, New York 12946	100	273582
Michele De Gennaro & Teresa De Gennaro, Jt. Ten. 3920 Bronx Boulevard Bronx, New York 10466	100	279160
Dehne Family Trust UA May 13, 1957 Marie Eirich Tr. 22 Deerfield Avenue Tuckahoe, New York 10707	77	279237



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Clemente Delsignore & Delma Delsignore, Jt. Ten. 73 Irving Avenue Brooklyn, New York 11237	120	283673
Renee De Lyon 115 Harmony Drive Massapequa Park, New York 11762	16	283679
John W. Dempewolf & Florence C. Dempewolf, Jt. Ten. 53 Buffington Place Bronxville, New York 10708	100	283845
Matilda Dinerman & Israel S. Dinerman, Jt. Ten. 212 West 22nd Street New York, New York 10011	100	287520
David Dinter 2000 84th Street Brooklyn, New York 11214	100	287580
Esther Dobbins 94-20 220th Street Queens Village, New York 11428	100	290340
Grace M. Doherty 123 East 37th Street New York, New York 10016	200	291400
Claire Duetsch c/o Low & Sons Inc. 580 Fifth Avenue New York, New York 10036	25	305180
Susan H. Dull 99 Ivy Way Port Washington, N.Y. 11050	100	306340
Mary Durovic 76-04 252 Street Bellerose, New York 11426	100	307550
Charles C. Eckert & Mildred Eckert, Jt. Ten. 1821 James Street Syracuse, New York 13206	25	311600
Esther Edgar 2400 Sedgewick Ave., Apt. 8A Bronx, New York 10468	100	312000
Manda Edinger 41 Bennett Avenue New York, New York 10033	50	312200

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Leo Edlin 315 East 62nd Street New York, New York 10022	100	312385
Egger & Co. c/o The Chase Manhattan N.A. Box 1508 Church Street Station New York, New York 10008	1,000	316020
Marie Eirich 22 Deerfield Avenue Tuckahoe, New York 10707	36	317630
Albert Elsen AS Substituted Committee of Celma Redston 150 Broadway New York, New York 10038	100	319330
Paula Epstein 165 West End Avenue, Apt. 9P New York, New York 10023	100	326480
Rudolph Epstein 608 Fifth Avenue New York, New York 10020	150	326510
Exc Mut Ins. Empl Thrift Fd Tr Trust UA Jan 1, 1964 John R. Shaw & L.C. Gregory & Donald G. McGrath Tr 741 Delaware Avenue Buffalo, New York 14209	100	339330
Exchange Mutual Insurance Co. Attn L.C. Gregory 741 Delaware Avenue Buffalo, New York 14209	1,000	339340
Exchange Mutual Insurance Co. Employees Thrift Fund UA January 1, 1964 741 Delaware Avenue Buffalo, New York 14209	100	339342
Pasquale Fabrizio & Lucy Fabrizio, Jt. Ten. 50-28 194th Street Flushing, New York 11365	100	339570
Morris Falk & Theresa Falk, Jt. Ten. 1801 Avenue N Brooklyn, New York 11230	100	340243



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Faulkner Dawkins & Sullivan Inc. 1 New York Plaza New York, New York 10004	59	342020
Louis Feinleib 84-29 153 Avenue Howard Beach, New York 11414	200	343467
Sam Feinlieb 105 61 Flatlands Fifth Street Brooklyn, New York 10036	400	343474
Eva Feldman c/o Marvin Freiman 444 Madison Avenue New York, New York 10022	400	343494
Herbert Hyman Feldman & Alice Esther Feldman, Jt. Ten. 8923 Avenue A Brooklyn, New York 11236	100	343496
Joseph C. Felece Box 374 Glenerie Boulevard Saugerties, New York 12477	25	343498
Beatrice Hope Ferguson 51 East 90th Street New York, New York 10028	100	344100
James F. Fetzner & Nancy Fetzner, Jt. Ten. 146 Mt. Vernon Avenue Rochester, New York 14020	30	345940
Max Fier & Sophia Fier, Jt. Ten. 75-82 183rd Street Flushing, New York 11366	50	346502
The First Reformed Church of Nyack New York P.O. Box 565 Nyack, New York 10960	50	347819
Robin Fishman 53 Shelbourne Lane New Hyde Park, N.Y. 11040	50	347945
American Savings Bank Dep A/C 26724 c/o Emma Fisher 2852 Broadway at 111th Street New York, New York 10025	45	348059

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Lucille Fisher & Sue Greenberg Ex UW L.A. Greenberg 6 East 46th Street, Rm. 301 New York, New York 10017	100	348093
Lucille Fisher 6 East 46th Street New York, New York 10017	200	348094
Barbara Fishman 40 West 86th Street New York, New York 10024	96	348100
Leo Fixler 116 John Street New York, New York 10038	500	349239
Mildred G. Flannery 123 Marine Avenue Brooklyn, New York 11209	800	350325
Charles R. Force & Juanita W. Force, Jt. Ten. 40-25 Hampton Street Elmhurst, New York 11373	25	361784
Thomas S. Forker Box 203 Pilgrim State Hospital W. Brentwood, New York 11717	100	361999
Isabel M. Forrest 115 Willow Street, Apt. 6-E Brooklyn, New York 11201	70	362136
Mabel C. Fowler William Street St. Johnsville, N.Y. 13452	300	365380
Henriette Frank 400 West End Avenue New York, New York 10024	100	369527
Helen Frankenheimer 101 2nd Street Garden City, New York 11530	200	369539
Charles Frederick & Co. c/o Irving Trust Co. Personal Trust Division One Wall Street New York, New York 10015	770	369664
Annette Freed 213 Rock Creek Lane Scarsdale, New York 10583	200	369671



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Anne C. French c/o Rauch 14 Sara Drive Lake Grove, New York 11755	200	370390
Abraham Friedman 100-18 Dreiser Loop Co-op City Bronx, New York 10475	100	370575
Millicent Friedman 85 Sycamore Avenue Mt. Vernon, New York 10553	100	370680
Samuel Friedman 19 Hampshire Road Great Neck, New York 11023	100	370702
Bridget Friel 560 Isham Street New York, New York 10034	100	370870
Anthony Garafolo & Rose Garafolo, Jt. Ten. 235 Main Street Eastchester, New York 10709	100	381120
William C. Geib Jeffersonville, New York 12748	100	386450
Robert E. Gelhaus 43 Lehigh Court Rockville Centre, N.Y. 11570	50	386480
Myron Gerenstein & Ruth Gerenstein, Jt. Ten. 9 Woodland Road Glen Cove, New York 11542	800	387156
Gerlach & Co. P.O. Box 2781 Grand Central Station New York, New York 10015	6,000	387175
Louis H. Geronimus & Virginia A. Geronimus, Jt. Ten. 208 Harbor Lane East Massapequa, New York 11762	200	387370
Jack Gershon c/o Brooklyn State Hospital Box 105 681 Clarkson Avenue Brooklyn, New York 11203	100	387390

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Charles Gershienbleet & Jane Gershienbleet, Jt. Ten. 50 East 19th Street Brooklyn, New York 11226	100	391400
Sidney R. Getman Cust. Enid D. Getman Unif Gift Min. Act N.Y. 810 Astor Avenue Bronx, New York 10467	50	391415
Margaret Gibbons 37-67 64th Street Woodside, New York 11377	100	393900
Theodore H. Gilbert & Kenneth W. Moore, Jt. Ten. Greenlawn Road Somers R D 2 Katonah, New York 10536	100	396017
Sherman Goldscheid & Gloria Goldscheid, Jt. Ten. 1615 Avenue 1 Brooklyn, New York 11230	200	406800
Kenneth Goodard c/o Parsons & Whittimore 200 Park Avenue New York, New York 10017	50	411150
Patricia P. Goode Carriage House East Apt. 29F Manlius, New York 13104	125	411155
Gould Investors Trust SBI Stuart Gould Trustee DTD 6/20/73 245 Great Neck Road Great Neck, New York 11021	500	413800
Gralla Publications Inc. 1501 Broadway New York, New York 10036	500	417635
Lillian Grappone 104 Bayberry Road Garden City, New York 11530	100	417920
Frieda Green 1770 62nd Street Brooklyn, New York 11204	50	423345
Sue Greenberg & Lucille Fisher Ex UW L.A. Greenberg c/o Lucille Fisher 6 East 46th Street New York, New York 10017	200	424200



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Constance E. Guille 7 Marcia Court Centerport, New York 11721	800	437887
Ella Gunzburger 4455 Broadway, Apt. 4H New York, New York 10040	100	438990
Hilde Gutmann 615 West 183rd Street New York, New York 10033	100	440400
Rogina Haase 12 Washington Avenue Cobelskill, New York 12043	4	442050
George J. Hackett, Jr. 101 Inwood Avenue Box 36 Pt. Lookout, New York 11569	100	442851
Morris Hamburg & Ruth Hamburg, Jt. Ten. 91 Hemingway Drive Rochester, New York 14620	25	446380
Harry Hankin 2440 Sedgwick Avenue Bronx, New York 10468	100	447117
George W. Hansen 200 East 57th Street New York, New York 10022	100	447166
George W. Hansen Inc. Employees Pension Trust 160 East 56th Street New York, New York 10022	200	447167
Helen Harrington 145 Skippers Lane Orient, New York 11957	100	453535
Harris Upham & Co. Incorporated 120 Broadway New York, New York 10005	23	453570
Meyer L. Harris 345 8th Avenue New York, New York 10001	400	453666
Verda Harrison 82-73 164th Street Jamaica, New York 11432	200	453702
Stephen H. Hart, Jr. Grey Rock Terrace Irvington, New York 10533	50	454127

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Beatrice Hartzband 15 Lexington Avenue Mt. Vernon, New York 10552	150	454480
Hayden Stone Inc. 1 WU I Plaza New York, New York 10004	175	456917
Barbara Gibbs Heaney 191 Soundview Avenue White Plains, New York 10606	100	458525
Richard A. Henriquez P.O. Box 324 Millerton, New York 12546	105	463650
James W. Hennessy & Catherine M. Hennessy, Jt. Ten. 27 Lynnbrook Avenue Pt. Lookout, New York 11569	325	463732
Alice B. Henriquéz P.O. Box 324 Millerton, New York 12546	105	463808
Fred H. Herlitz 182 Berry Hill Road Syosset, New York 11791	200	465518
Henry Herman 125 East 84th Street New York, New York 10028	100	465780
Ida Herman 7 Huber Court Rockville Centre, N.Y. 11570	200	465783
Hortense Hilborn Buckingham Apts. 253 Garth Road, Apt. 4-B Scarsdale, New York 10583	50	468980
Eleanor J. Hills 230 East 73rd Street New York, New York 10021	220	469300
Hedwig Hirsch 785 West End Avenue New York, New York 10025	100	475140
Edna Dahl Hochuli 77 Monroe Street Garden City, New York 11530	100	478603
Ernest B. Hofman 330 Bay Avenue Huntington, New York 11743	200	478693



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Fred H. Holmsten & Lillie N. Holmsten, Jt. Ten. 16 Plymouth Road Port Washington, N.Y. 11050	50	479500
Hornblower & Weeks Hemphill Noyes 8 Hanover Street New York, New York 10004	200	480900
Jean Hoviss 82 Roosevelt Street Islip Terrace, New York 11752	125	482961
Barbara A. Howard 330 East 80th Street New York, New York 10021	50	482970
Irwin I. Howard 30 Danville Road Spring Valley, New York 10977	70	482990
Sheila Howard Cust. Jeffrey Scott Howard Unif Gift Min Act N.Y. 2436 Halyard Drive Merrick, New York 11566	1	483056
Charles Arthur Huguenin 925 West End Avenue New York, New York 10025	30	483772
John T. Hurley Cust. Jannine E. Hurley Unif. Gift Min Act. N.Y. 51 Devries Avenue North Tarrytown, N.Y. 10591	150	484798
John T. Hurley Cust. James R. Hurley Unif Gift Min Act N.Y. 51 Devries Avenue North Tarrytown, N.Y. 10591	250	484799
John T. Hurley Cust. John R. Hurley Unif Gift Min Act N.Y. 51 Devries Avenue North Tarrytown, N.Y. 10591	150	484800
John T. Hurley Cust. Marijane Hurley Unif Gift Min Act N.Y. 51 Devries Avenue North Tarrytown, N.Y. 10591	250	484802

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Harry Hurwitz & Irving Harlan, Jt. Ten. 565 Valley Drive Syracuse, New York 13207	50	484883
E.F. Hutton & Company Inc. P.O. Box 5254 Church Street Station New York, New York 10006	1,700	486920
Muriel Hoffman 108 Milburn Street Rockville Centre, N.Y. 11570	100	487691
Catherine Iaconi 77 Maple Avenue, Apt. 12C Smithtown, New York 11787	100	489700
Rhea Crane Isaacs 204 E. Jefferson Street Syracuse, New York 13202	50	497047
Louis J. Jacques 33-39 75th Street Jackson Heights, N.Y. 11372	50	500981
Wanda Jagocki 642 Fifth Avenue Brooklyn, New York 11215	100	502053
Jaquith & Co. P.O. Box 2408 Church Street Station New York, New York 10008	300	504060
David Jasper & Dorothy Jasper, Jt. Ten. 110 Wykagyl Terrace New Rochelle, New York 10804	200	504485
Sigurd Johansen 538 Wooley Avenue Staten Island, New York 10314	200	514700
Esther W. Johnson 12 Mont Alto Drive Jamestown, New York 14701	100	515120
Paul Johnson 4 1/2 S. Church Schenectady, New York 12305	200	515341
Paul B. Johnson 4 1/2 S Church Schenectady, New York 12305	626	515345



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Grace C. Jones 35 Park Avenue New York, New York 10016	50	517392
Josephthal & Co. 120 Broadway New York, New York 10005	418	517957
Lillian Kahn 45 Sutton Place South Apt. 16-F New York, New York 10022	100	524819
Evelyn Kallman 1565 East 18th Street Brooklyn, New York 11230	50	525110
Bruno Kalmen Box 143 Whitney Point, New York 13862	100	525170
Theresa A. Kanter c/o Chemical Bank 157 East 42nd Street New York, New York 10017	100	525990
Elizabeth Gossett Karaman c/o Chase Manhattan Bank N.A. P.O. Box 1508 Church Street Station New York, New York 10008	1,150	527422
Harold Kaplowitz & Jeanette Kaplowitz, Jt. Ten. 11 Balint Drive Yonkers, New York 10710	100	526350
Max Kaskowitz 488 7th Avenue New York, New York 10018	70	527778
Meyer Katz Cust. Charles Katz Unif Gift Min Act N.Y. 151-34 26th Avenue Flushing, New York 11354	20	528387
Emanuel L. Kayman Tr UA Aug. 30, 1961 FBO R. S. Bordiga & J.S. Bordiga & B. Bordiga 2099 Jericho Turnpike New Hyde Park, N.Y. 11041	200	529075
Herman Keller 137-47 45th Ave., Apt. 16-F Flushing, New York 11355	36	533290

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Max Edward Kent & Stella P. Kent, Jt. Ten. 201 West 92nd Street Apt. 3E New York, New York 10025	100	534030
Adrienne Kibrite 51 Albany Street Elmont, L.I., N.Y. 11003	50	536730
Edward F. Kilgras & Helen M. Kilgras, Jt. Ten. 193 Clovercrest Drive Rochester, New York 14618	100	538450
Elaine M. Kimber Little Switzerland Geneva Drive Road 1 Hopewell Junction, N.Y. 12533	50	538783
King & Co. c/o First Nat'l City Bank 20 Exchange Place New York, New York 10015	100	539066
Florence Kinsbruner c/o Concord Hotel Kiamesha Lake, New York 12751	300	539311
Roslyn Klarman 8 Cloverwood Road White Plains, New York 10605	100	540908
Roslyn Klarman Cust. Ellen Klarman Unif Gift Min Act N.Y. 8 Cloverwood Road White Plains, New York 10605	100	540918
Jeanne Klausner Box 298 Radio City P.O. New York, New York 10019	100	541050
Helen Klintrup 14 Sutton Place South New York, New York 10022	200	545440
Joseph A. Knight & Margaret L. Knight, Jt. Ten. 27 Ardsley Drive New City, New York 10956	700	548018



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Belle Kopitko 3215 Avenue H Brooklyn, New York 11210	100	548423
Marcia G. Koponen 125 Palph Avenue White Plains, New York 10606	50	548429
Florence Koppelman 250 Clarkson Avenue Brooklyn, New York 11226	100	548445
William Krause 89 Hicks Street Brooklyn, New York 11201	500	555189
Joseph Krizek 23 21 48th Street Long Island City, N.Y. 11103	200	555555
Ethel Kurzman 466 Brantwood Road Snyder, New York 14226	100	557480
Lillian Laitman 860 Fifth Avenue New York, New York 10021	100	567253
Henry F. Lande 9 Mayberry Road Chappaqua, New York 10514	50	567695
John Timothy Lansdowne, Jr. Box 42 Truxton, New York 13158	60	568285
Sophie Laskas 14 Mineola Avenue Pt. Lookout, New York 11569	323	568994
Beatrice S. Leeds 301 East 75th Street New York, New York 10021	100	576970
Jewel Leeds 177 East 77th Street New York, New York 10021	100	576975
Albert I. Leigh 77-15 113th Street Forest Hills, New York 11375	400	577282
Rita Leignadier 24 Putnam Avenue Valley Stream, New York 11580	100	577310

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Margaret A. Lenart c/o Chase Manhattan Bank AC 006-1-035-150 23rd Street & 1st Avenue New York, New York 10009	500	577730
George Lerner 12 Prospect Court Freeport, N.Y. 11520	200	578480
Joshua Lerner 445 B 123rd Street Rockaway Park, New York 11694	100	578498
Oscar Lerner & Helene E. Lerner, Jt. Ten. 160 West 95th Street New York, New York 10025	100	578620
Ruth S. Lerner 35 Sutton Place New York, New York 10022	100	578645
Samuel S. Levine 29-50 137th St. Apt. 5A Flushing, New York 11354	50	582600
Abraham Levine & Rose Levine, Jt. Ten. 2074 Bronx Park E Bronx, New York 10462	100	582607
Morris Levine 1 Tennis Court Brooklyn, New York 11226	100	582613
George Levine & Esther Levine & Sharon Friedentag, Ten. Com. 88-67 195th Street Hollis, New York 11423	500	582616
Lillian S. Levine 139 East 35th Street New York, New York 10016	205	582630
Dorothea S. Levy 5 Riverside Dr., Apt. 610 Binghamton, New York 13905	250	583030
Jeannette Levy 103-00 Shore Front Parkway Rockaway Park, New York 11694	100	583101
Rae H. Lewis 370 W Broadway Long Beach, New York 11561	30	583515
Sam Lightig & Shirley Lightig, Jt. Ten. 213-11 86th Avenue Queens Village, N.Y. 11427	50	587900



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Henry Linder & Harriet Linder, Jt. Ten. 120 East 34th Street New York, New York 10016	200	588965
Norma Rae Loew 5 4th Place Garden City, New York 11530	200	596425
Hannah Low c/o Low & Sons Inc. 580 Fifth Avenue New York, New York 10036	100	606160
Hannah Low Cust. Deborah Low Unif Gift Min Act N.Y. c/o Low & Sons Inc. 580 Fifth Avenue New York, New York 10036	25	606162
Hannah Low Cust. Rachel Low Unif Gift Min Act N.Y. c/o Low & Sons Inc. 580 Fifth Avenue New York, New York 10036	25	606165
Joseph Low c/o Low & Sons Inc. 580 Fifth Avenue New York, New York 10036	25	606200
Frank T. Lucan & Catherine Lucan, Jt. Ten. 522 Calhoun Avenue Bronx, New York 10465	100	607985
Lester T. Lutzker 203 Round Hill Road Roslyn Heights, N.Y. 11577	100	608690
Peter Lux Cust. Allison Lux Unif Gift Min Act N.Y. 245-33 149th Road Rosedale, New York 99999	1	608710
John D. MacDonald 77 Lido Boulevard Pt. Lookout, New York 11569	100	612406
Olga Madsen 400 2nd Ave., Apt. 230 New York, New York 10010	100	613500

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Muriel Mageo & Gerald Safferman, Jt. Ten. 123 Berkshire Road Rockville Centre, N.Y. 11570	106	613523
Catherine Maher & Mary Joan Maher, Jt. Ten. 703 Carroll Street Brooklyn, New York 11215	50	613539
Celia N. Mann 110-11 Queens Boulevard Forest Hills, New York 11375	400	616600
Solomon Maranov & Belle Maranov, Jt. Ten. 1450 51st Street Brooklyn, New York 11219	50	618915
Belle Maranov 1450 51st Street Brooklyn, New York 11219	25	620840
John J. Maschenic & Solveig J. Maschenic, Jt. Ten. 65 Nottingham Road New Hyde Park, N.Y. 11040	100	625105
Nicholas W. Massa & Cora F. Massa, Jt. Ten. 28 Meadow Brook Road Syosset, New York 11791	100	628524
Philip Mazzilli & Sara Mazzilli, Jt. Ten. 32 Lytton Avenue Hartsdale, New York 10530	100	632300
Edna McCabe 11 S. Tuttle Place Westhampton Beach, N.Y. 11978	200	636188
R.A. McCallum Main Road Cutchoque, New York 11935	100	636506
Charles L. McChesney 4843 Carey Drive Manlius, New York 13104	200	636720
Raymond McCormack & Margaret McCormack, Jt. Ten. 62 Nichols Avenue Brooklyn, New York 11211	25	636890
Pauline D. Melady 58 Bellmore Avenue Pt. Lookout, New York 11569	100	644265



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Edward Melosh & Gretcher Melosh, Jt. Ten. P.O. Box 171 27 Elm Avenue Millerton, New York 12546	105	644720
Sherman Merker Tr Star Cleaning Contractors Corp. Emp Pro Sharing Trust UA Dec. 24, 1963 c/o Sherman Merker 7 Knoll Road Sands Point, New York 10001	200	644921
Merrill Lynch Pierce Fenner & Smith Incorporated One Liberty Plaza 165 Broadway New York, New York 10006	7,572	645000
Abbe A. Messe 61 Briary Road Dobbs Ferry, New York 10522	200	645304
Carolyn Messe 61 Briary Road Dobbs Ferry, New York 10522	100	645310
Kenneth R. Metzler 439 Kilbourne Road Rochester, New York 14618	200	645850
Irene Mevay 390 Andrews Road E. Williston, N.Y. 11596	100	645910
Charles J. Michaels & Naomi E. Michaels, Jt. Ten. 108 Linden Tree Lane Webster, New York 14580	100	652291
Frances Michelson 250 1st Avenue New York, New York 10009	20	652700
Abraham Miller 818 Hunts Point Avenue Bronx, New York 10459	290	655732
Dorothy Miller 79 Henel Avenue Amherst, New York 14226	400	656172
Helen Fulton Miller 18 Wellington Road Garden City, New York 11530	10	656330

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Louis Moffshow & Tania Moffshow, Jt. Ten. 147-37 Roosevelt Avenue Flushing, New York 11354	100	666425
Model Roland & Co. Inc. 120 Broadway New York, New York 10005	300	666360
Edward Morgan 11 North Court Port Washington, N.Y. 10150	125	671775
Arthur L. Morris 2756 East 66th Street Brooklyn, New York 11234	200	672424
Hannah C. Kaufman Moses 440 West End Avenue New York, New York 10024	100	673075
Alan G. Motz 4343 Kissena Boulevard Flushing, New York 11355	100	673380
Stephen Mullaney & Mildred Mullaney, Jt. Ten. 333 Hollywood Avenue Yonkers, New York 10707	150	676575
W. Robert Mulligan & Olive S. Mulligan, Jt. Ten. 166-43 17th Road Whitestone, New York 11357	100	678410
Anthony Myslivecek & Gladys Myslivecek, Jt. Ten. 31 Rowe Place New Hyde Park, New York 11040	100	679506
Nathan I. Naylor & Rosalyn N. Naylor, Jt. Ten. 32 Harris Avenue Albany, New York 12208	50	682115
Tesse L. Ness 40-66 Ithaca Street Elmhurst, New York 11373	75	687800
John W. Neuhs 33 Elm Street Coxsackie, New York 12051	100	687889
The Morris & Ida Newman Family Foundation Inc. Attn Joseph Newman Treas. 369 Lexington Avenue New York, New York 10017	200	688200



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Joel Niego Cust. Lisa Niego Unif Gift Min Act N.Y. 9 White Cliff Lane Nesconset, New York 11767	100	692203
Helen T. Noble 263 West End Avenue Apt. 8-C New York, New York 10023	220	695400
Paul E. Noll c/o DuPont Glore Forgan Incorporated Box 426 Bowling Green Station New York, New York 10004	75	695900
Paul Odessey 31 Beverly Road Great Neck, New York 11021	200	701148
Phyllis Odessey East New York Savings Bank For Deposit Ac 15529-9 23 North Station Plaza Great Neck, New York 11021	100	701153
Richard Odessey c/o East New York Savings Bank AC 7539-0 23 North Station Plaza Great Neck, New York 11021	100	701155
East New York Savings Bank For Dep. A/C 13402-3 c/o Rosaline L. Odessey 23 North Station Plaza Great Neck, New York 11021	200	701158
East New York Savings Bank For Dep. A/C 13402-3 c/o Rosaline L. Odessey 23 North Station Plaza Great Neck, New York 11021	100	701159
Sheila Odessey East New York Savings Bank 32 N. Station Plaza For Dep. AC 25520-8 Great Neck, New York 11021	100	701165
Katherine Baldwin Ogden Fulle Drive Valley Cottage, New York 10989	50	701550
Audrey M. O'Leary Cust. Michael O'Leary Unif Gift Min Act N.Y. 111 Brewster Road Scarsdale, New York 10583	25	702120

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Gerald L. Orbach & Annemarie Orbach, Jt. Ten. 119 20 Union Turnpike Kew Gardens, New York 11415	100	703380
Paine Webber Jackson & Curtis Incorporated P.O. Box 12083 Church Street Station New York, New York 10005	345	712000
Donald S. Pappas & Beverly Pappas, Jt. Ten. 4372 Bedford Avenue Brooklyn, New York 11229	181	714870
Charles M. Parody & Jeanette Parody, Jt. Ten. 306 Pleasantview Drive Liverpool, New York 13088	100	715310
John J. Pasquale, & Minnie Pasquale, Jt. Ten. 2 Redwood Road New Hyde Park, New York 11040	100	716800
C. Eloise Paulson 147 Shonnard Terrace Yonkers, New York 10701	200	717932
Ann S. Peck 45 Tudor City Place New York, New York 10017	100	723613
Pershing & Co. Inc. 120 Broadway New York, New York 10005	905	724945
Rose C. Pfeffer 600 Shore Drive Oakdale, New York 11769	150	727525
Doris Pfeffer 295 Central Park West New York, New York 10024	96	727534
Rose C. Pfeffer 600 Shore Drive Oakdale, New York 11769	308	727538
Charles Pindyck 16 N. Chatsworth Avenue Larchmont, New York 10538	400	732365



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Frank Piranio & Ursula Piranio, Jt. Ten. 89-05 133rd Street Richmond Hill, New York 11418	150	732500
Lucille S. Powers 163 Rosemont Street Albany, New York 12206	100	733940
Powers & Co. P.O. Box 1479 Church Street Station New York, New York 10008	450	733948
Dinah Primak 1562 Ocean Avenue Brooklyn, New York 11230	100	734245
Arthur G. Raabe 42 Chasse Road Manhasset, New York 11030	25	735915
Murray Rabinowitz & Audrey Rabinowitz, Jt. Ten. 80-18 254th Street Floral Park, New York 11004	50	735924
Maurice Ratner Tr U/A Apr 7 70 FBO R. Ratner 114 Harbor View Drive Massapequa, New York 11758	100	754784
William E. Rebbby 145 Smith St., Apt. 5D Freeport, New York 11520	100	756999
Martha E. Reed 102 Lake Road Valley Cottage, New York 10989	175	758255
Reynolds Securities Inc. 120 Broadway New York, New York 10005	950	764160
Pasquale Ricci & Alice Ricci, Jt. Ten. 1501 Madison Street Elmont, New York 11003	100	765170
George Riesenberger 63 Glen Haven Road Rochester, New York 14609	100	765655
Margaret H. Rittenhouse 230 East 48th Street New York, New York 10017	100	769265

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Martin M. Roberts Cust. Beth Amy Roberts Unif Gift Min Act N.Y. 968 Lynn Drive Valley Stream, New York 11580	25	776530
Martin M. Roberts Cust. Jodi Lynn Roberts Unif Gift Min Act N.Y. 968 Lynn Drive Valley Stream, New York 11580	25	776538
Henrietta Itta Rodan 510 East 85th Street New York, New York 10028	100	778500
Thekla Rosenthal 253 Garth Road Buckingham Apts., Apt. 48 Scarsdale, New York 10583	50	784250
Carl Rossing 39 Hazelton Drive White Plains, New York 10605	100	787000
Eileen Rothman 29 Western Highway Tappan, New York 10983	250	793315
Jacqueline Rubin 1815 215th Street Bayside, New York 11360	50	798080
Phyllis L. Russo 4564 Boston Road Pelham, New York 10803	150	798131
Henry Salerno & Jeanine Salerno, Jt. Ten. 474 Hillside Drive New Hyde Park, New York 11040	145	802530
Henry Salkin & Ann Salkin, Jt. Ten. 100 Hamilton Drive Roslyn, New York 11576	100	802597
William S. Samuels 5 Kensington Court Great Neck, New York 11021	100	802775
William S. Samuels 5 Kensington Court Great Neck, New York 11021	200	802793
Seymour Sandberg 404 Barnard Avenue Cedarhurst, New York 11516	100	802811



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Emil C. Sauer Tr. U/A August 29, 1967 F/B/O M M Sauer 81 Grayton Road Town of Tonawanda, N.Y. 14120	100	804756
Violet Sayan 571 9th Street Brooklyn, New York 11215	100	805000
Edward R. Schapiro Cust. Kathy Susan Schapiro Unif Gift Min Act N.Y. 11 Herbert Avenue White Plains, New York 10606	5	816443
Charles Schatt c/o Schattur Novelty 901 Broadway New York, New York 10003	100	816681
Sara Schiller 500 West 235th Street Bronx, New York 10463	100	817325
Marion J. Schindler 731 W. Ferry Street Buffalo, New York 14222	100	817360
Rose Schulherr 615 West 183rd Street New York, New York 10033	100	818635
Julius Schulleri & Ethel Schulleri, Jt. Ten. 93 Lynbrook Avenue Pt. Lookout, New York 11569	100	818650
Edwin Schwarz 41-22 42nd Street, Apt. 4D Long Island City, N.Y. 11104	50	818975
Julius Selterman 185 West End Avenue New York, New York 10023	50	828580
Abraham Serels & Dorothy Serels, Jt. Ten. 500 West 235th Street Bronx, New York 10463	100	832620
Harold A. Shapiro 600 Bedford Road Pleasantville, New York 10570	200	837907
Edward Shaw Cust. Scott Jeffrey Shaw Unif Gift Min Act N.Y. 214 Green Acres Road South Valley Stream, New York 11581	10	837924

A-70

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Frances L. Sharpless Tr UA June 12, 1967 FBO W.A. Sharpless 61 Westochard Road Chappaqua, New York 10514	100	837930
Anita Shawl 305 West 72nd Street New York, New York 10023	100	837963
Shearson Hammill & Co. Incorporated P.O. Box 5701 Church Street Station New York, New York 10005	3,128	838000
Shields & Co. 44 Wall Street New York, New York 10005	70	840215
Margaret Shortell 10 Stuyvesant Oval New York, New York 10009	250	844420
Alfred D. Siegel 22 Old Niskayuna Road Loudonville, New York 12211	25	845715
Anni Silberberg 60 Remsen Street Brooklyn, New York 11201	100	848205
Charles Simonian & Rose Simonian, Jt. Ten. 14-85 164 Street Beechurst, New York 11357	300	850099
Mary Sitnicoff 2886 Middletown Road Bronx, New York 10461	100	852600
Thomas Allen Smith Cust. Jennifer Jeanne Smith Unif Gift Min Act N.Y. 51 Ocean Avenue Massapequa, New York 11758	200	858650
Leonard Snyder 2375 East 3rd Street Brooklyn, New York 11223	300	861367
Marilyn M. Sobolewski 4892 Coventry Road Syracuse, New York 13215	100	861406
Frank J. Spath 32 Buckingham Drive Albany, New York 12208	100	863940



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Charles J. Speck, Jr. Box 19 Claryville, New York 12725	100	864045
Irene Spiegel 70 East 10th St., Apt. 8J New York, New York 10003	100	864190
Martha G. Stark 1040 Park Avenue, Apt. 8H New York, New York 10028	450	877700
Frank Staropoli c/o Stone & Webster Incorporated 90 Broad Street New York, New York 10004	100	877750
Dorothy S. Stengel 101 Old Mamaroneck Road White Plains, New York 10605	260	878973
Jenny Stern 100 Park Terrace West New York, New York 10034	200	879452
Stock Club 57 A Partnership 3767 Delaware Avenue Buffalo, New York 14217	200	891180
Jakob Stockel & Eleanor Stockel, Jt. Ten. 40 Bedford Road Pleasantville, New York 10570	100	891218
Morris Sussman 30-91 Crescent Street Long Island City, N.Y. 11102	200	891493
Donald H. Swanson & Lily L. Swanson, Jt. Ten. 306 Beech Street Syracuse, New York 13212	50	898000
Lillian Swarth 25-30 163rd Street Flushing, New York 11358	100	899194
Mildred Teich Cust. Lawrence Teich Unif Gift Min Act N.Y. 29-2A Richmond Boulevard Ronkonkoma, New York 11779	50	904720
Mildred Teich Cust. Brian Teich Unif Gift Min Act N.Y. 29-2A Richmond Boulevard Ronkonkoma, New York 11779	50	904724

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Mary Jane Termini c/o Mary Jane McShane 718 Madison Avenue New York, New York 10021	100	904728
Bowery Savings Bank c/o William Thaler For Dep. AC/NO 495212 110 East 42nd Street New York, New York 10017	100	905240
Carl Thalman & Margaret Thalman, Jt. Ten. 296 North Central Avenue Hartsdale, New York 10530	50	905802
Rose J. Tracy 29 Tyler Street Rochester, New York 14621	350	921550
Luceea Trad 1103 Mohawk Street Utica, New York 13501	25	921600
Anna Trakman 1024 E. 12th Street Brooklyn, New York 11230	100	921750
Barbara Tripaldi 87 Centre Street Bronx, New York 10464	100	922835
Arthur Uzzilia & Ann Uzzilia, Jt. Ten. Box 69 Cairo, New York 12413	200	933535
Ralph Vail 3 Ihwood Avenue Box 162 Pt. Lookout, New York 11569	200	940215
Alyce Vakassian 415 Boston Post Road Rye, New York 10580	200	940620
John Vakassian 415 Boston Post Road Rye, New York 10580	200	940637
Emma Gene Veigt c/o E.G. Zugner 7 Cottage Place Tuckahoe, New York 10707	100	943863
Ruth Vidockler 2645 Homecrest Avenue Brooklyn, New York 11235	100	944390



<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Alex Waitzman & Irene Waitzman, Jt. Ten. 28-02 Parsons Boulevard Flushing, New York 11354	25	950985
Samuel Wald & Myron Wald, Jt. Ten. 40 Park Avenue New York, New York 10016	100	950990
Morris Waldman & Beatrice Waldman, Jt. Ten. 560 Palmer Road Yonkers, New York 10701	100	951016
Catherine M. Walsh 50 Kipp Street Chappaqua, New York 10514	100	951285
Manufacturers Hanover Trust Co. Dep A/C 15-5-16624 N/O Edna Wasser 131 East 23rd Street New York, New York	100	952111
Doris Weiner 222 East 35th Street New York, New York 10016	200	960715
Cecilia Weinschenk 63 Claire Court West Babylon, New York 11704	200	961070
Harvey Weinschenck 19 Burling Lane South West Islip, New York 11795	45	961079
B & DA Weisburger Inc. Profit Sharing & Retirement Plan U/A Nov 15, 1969 1440 Broadway New York, New York 10018	400	963050
Isabella Weise 373 East 31st Street Brooklyn, New York 11226	100	963075
Bernice Weiss Cust. Elyce Weiss Unif Gift Min Act N.Y. 232-09 Merrick Road Laurelton, New York 11948	100	963735
Diana Weiss 11 Campbell Road Court Binghamton, New York 13095	200	963740

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>ACCOUNT NUMBER</u>
Leo Weissman Cust. Steven Weissman Unif Gift Min Act N.Y. 48 Country Drive Plainview, New York 11803	100	965225
Bertram Wellman Dansy Hill Road Milford, New York 13807	100	965864
Erling J. Westvig & Alfchild Westvig, Jt. Ten. 260 Clinton St, Apt. 328 Hempstead, New York 11550	100	968265
Marjorie Goldsamt Whitehill 22 N. Forest Avenue Rockville Centre, N.Y. 11570	400	989495
H.N. Whitney Goadby & Co. 48 Wall Street New York, New York 10005	100	989780
Mildred K. Wiener 535 West 110th Street New York, New York 10025	100	990829
Donnell Williams & Anne Williams, Jt. Ten. 146 Bedford Avenue Garden City, New York 11040	100	991808
Paul H. Witte & Margaret R. Witte, Jt. Ten. 3 Woodville Lane Searington, New York 11507	400	993043
Dean Witter & Co. Incorporated 2 Broadway New York, New York 10004	681	993062
Bernard Wittie 1258 East 99th Street Brooklyn, New York 11236	25	993180
Dorothe Woyden Coerdenbrae Briarcliff Manor, N.Y. 10510	100	994370
Leon Wunder & Rena Wunder, Jt. Ten. 47-52 197th Street Flushing, New York 11358	100	994900
Mary Ellen Yakeley 2 Eleanor Place Huntington, New York 11743	100	995470



A-75

<u>SHAREHOLDER</u>	<u>NUMBER OF SEARES</u>	<u>ACCOUNT NUMBER</u>
Martha Zabb Cust. Kenneth L. Zabb Unif Gift Min Act N.Y. 6 Glenwood Road Plainview, New York 11803	300	996693
Celia E. Zeichner 301 East 48th Street New York, New York 10017	200	997157
Abby Zelnick Old White Plains Road Mamaroneck, New York 10543	400	997167
Abby Zelnick Cust. Fern Zelnick Unif Gift Min Act N.Y. Old White Plains Road Mamaroneck, New York 10540	100	997172
Ethel Zoha 10 Norgate Drive Sayville, New York 11789	40	998450
Selma Zuckerman 200 East 84th Street Apt. 4-D New York, New York 10018	200	999104
Verna Rhodes 929 College Avenue Elmira, New York 14901	100	765009
Bernard Weissberg 930 Fifth Avenue New York, New York 10021	100	963750

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- x

THE BOHACK CORPORATION,	:	
	:	<u>AFFIDAVIT</u>
Plaintiff,	:	74 Civ. 518
-against-	:	(JBW)
ALISON MORTGAGE INVESTMENT TRUST,	:	
Defendant.	:	

----- x

STATE OF NEW YORK )  
                              : ss.:  
COUNTY OF NEW YORK )

WILLIAM F. TUETING, being duly sworn, deposes and says:

1. I am an attorney associated with the firm of Spengler Carlson Gubar & Churchill, attorneys for the defendant, Alison Mortgage Investment Trust ("Alison"), in the above-captioned action. I submit this affidavit in support of Alison's motion to dismiss, made pursuant to Rule 12(h) (3) of the Federal Rules of Civil Procedure.

2. In plaintiff's memorandum of law in opposition to defendant's motion, plaintiff asserts that Alison "does not supply one stockholder who actually resided in New York on . . . April 2, 1974" (Pl. Memo p. 12).

3. As indicated in defendant's reply memorandum of law and the affidavits of Robbins P. Bogue being submitted in support of this motion, Alison has 436 shareholders who apparently resided in New York when this action was commenced on April 2, 1974. Therefore, this Court can take judicial notice of the



virtual impossibility of there being no New York citizens who were Alison shareholders on April 2, 1974. Judge Waterman did take such judicial notice in a similar situation in Baer v. United Services Automobile Association, a case cited in defendant's memorandum of law.

4. Counsel for plaintiff have been provided with a list of the 436 New York resident shareholders on April 2, 1974, which list has been verified by Alison's Registrar, Union Bank, from its records, and is annexed to the affidavit of Robbins P. Bogue, also submitted herewith. Annexed hereto as Exhibit A is a copy of a letter dated December 5, 1975 to plaintiff's counsel reflecting these facts.

5. Although plaintiff has the burden of proving that jurisdiction exists in this Court, defendant, we submit, has offered sufficient evidence for the Court to conclude that it has no jurisdiction. But, if this Court should determine, for any reason, both that it will not take the judicial notice as Judge Waterman did in Baer v. United Services Automobile Association and that the evidentiary facts offered by Alison do not sufficiently establish the existence of New York citizen shareholders on April 2, 1974, it is respectfully requested that this Court hold a hearing to determine this question pursuant to Rules 12 and 43 of the Federal Rules of Civil Procedure.

William F. Tueting  
William F. Tueting

Sworn to before me this  
8th day of December, 1975

Lynn Petri  
Notary Public

LYNN PETRI  
Notary Public, State of New York  
No. 12345678  
Qualified in New York County  
Certificate filed in New York County  
Commission Expires March 30, 1977



A-78

SPENGLER CARLSON GUBAR & CHURCHILL  
ATTORNEYS AT LAW

280 PARK AVENUE, NEW YORK, N.Y. 10017

ROBERT S. CARLSON  
JONATHAN N. CHURCHILL  
LEONARD GUBAR  
CLARK J. GURNEY  
JEROME M. LEVINE  
J. EDWARD MEYER, III  
BRUCE A. RICH  
SILAS SPENGLER

GREGORY HATZ  
CHARLES E. MATTHEWS, JR.  
WILLIAM J. MCSHERRY, JR.  
JOHN J. NOVAK, JR.  
ROBERT L. ROBINSON  
LEONARD SCHNEIDMAN  
WILLIAM F. TUETING

TELEPHONE  
(212) 682-4444  
CABLE "ROCKSCOURT"  
TELEX 127596

OF COUNSEL  
KENNETH J. KWIT  
ALLAN R. TESSLER

December 5, 1975

Re: Bohack v. Alison

Messrs. Shaw & Levine  
770 Lexington Avenue  
New York, New York 10021

Dear Sirs:

I have concluded from a review of Bohack's memorandum of law in response to Alison's motion to dismiss the above-captioned action that you intend to raise the issue of whether any of the holders of shares of beneficial interest in Alison were citizens of the State of New York on April 2, 1974, the date this action was commenced.

As Mr. Bogue stated in his affidavit submitted in support of the motion, in paragraph 5, the list annexed thereto as Exhibit A is a "representative list" of persons who were listed as New York residents on the periodic dividend lists of Alison for December 10, 1973 and June 3, 1974. We have since prepared a full list of persons who were Alison shareholders and who appear to have resided in New York on April 2, 1974, the date this action was commenced. Such list contains the names of approximately 436 persons.

Although Bohack has the burden of proof in establishing the existence of subject matter jurisdiction, we are enclosing for your inspection a copy of this list which will also be submitted to Judge Weinstein as part of the record on this motion. If, following such inspection, you persist in raising the issue of whether an Alison shareholder was a citizen of New York on the date this action was commenced, we will ask Judge Weinstein to take judicial notice of the virtual impossibility



Messrs. Shaw &amp; Levine

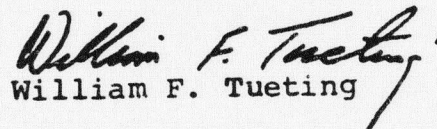
December 5, 1975

of there not being a person who was both a citizen of New York and an Alison shareholder on the date this action was commenced. If the Judge chooses not to take such judicial notice, we will ask him to hold a hearing pursuant to Rules 12 and 43 of the Federal Rules of Civil Procedure for the purpose of establishing that fact.

It is my sincere belief that such a course should not be necessary, and I request that you stipulate that at least one Alison shareholder was a New York resident on the date this action was commenced.

We still have not received Bohack's answers to defendant's interrogatories and its response to defendant's rule 34 request. Obviously, we will not be in a position to discuss seriously any settlement of this action, as Judge Weinstein requested, until we receive these documents.

Very truly yours,

  
William F. Tueting

Enclosure

A-80  
COMPLAINT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

---

THE BOHACK CORPORATION,

Plaintiff,

COMPLAINT

-against-

ALISON MORTGAGE INVESTMENT TRUST,

Defendant.

---

74C 518

Plaintiff, by its attorneys, SHAW AND LEVINE, complaining  
of the defendant, alleges the following:

JURISDICTION:

1. Plaintiff is a New York Corporation, with its principal place of business in the County of Queens, State of New York.
2. Defendant is a California business entity, and for the purposes of jurisdiction, a resident of the State of California.
3. The amount in controversy exceeds Ten Thousand (\$10,000) Dollars.

UNDERLYING FACTS:

4. On May 1, 1973, defendant agreed to lend to plaintiff the sum of One Million, Three Hundred Thousand (\$1,300,000) Dollars, subject to the terms and conditions of a letter of commitment, a copy of which is annexed hereto as Exhibit "A", for the development of a supermarket and shopping center in Ridgefield, New Jersey, pursuant to a lease with GENESCO, INC., a Tennessee corporation.
5. On May 3, 1973, plaintiff accepted that commitment and the terms and conditions thereof in writing, thereby executing the loan agreement.



6. Pursuant to such agreement, plaintiff paid Thirteen Thousand (\$13,000) Dollars to defendant as a "good faith deposit".

7. Plaintiff thereafter complied with all the terms and conditions of the loan agreement to be performed by it, except insofar as it was prevented from doing so by acts of the defendant.

8. Starting with approximately the second week of June, 1973, defendant engaged in dilatory tactics to prevent the consummation of the loan agreement.

9. On June 21, 1973, plaintiff made written demand upon the defendant for closing, as follows:

"Demand is made for a closing forthwith, in the failure of which The Bohack Corporation will hold Alison Mortgage Investment Trust responsible for all its damages accrued or accruing and reserves to itself all its remedies at law or equity available." (See Exhibit "B" herewith annexed.)

10. On June 29, 1973, defendant wrote to plaintiff stating:

"You will hear directly from our counsel regarding the status of our commitment as it is felt generally that the conditions in Commitment #1070 were not fulfilled."

11. Upon receipt of said letter, on July 2, 1973 plaintiff telegraphed defendant as follows:

"RE: COMMITMENT #1070. FAILURE TO CLOSE ARBITRARY AND WILFUL ON THE PART OF ALLISON MORTGAGE INVESTMENT TRUST. DEMAND IS MADE FOR AN EXTENSION OF COMMITMENT UNTIL SUCH TIME AS A CLOSING MAY BE ACCOMPLISHED." (See Exhibit "C" herewith annexed.)

12. On August 1, 1973, defendant wrote a letter to plaintiff (see Exhibit "D" herewith annexed) which in pertinent part stated

"This is to confirm our previous oral and written advice to you of our intention not to pro-



ceed in a manner calculated to comply with the terms of the aforesaid commitment."

13. At no time did defendant ever state to plaintiff in what manner plaintiff allegedly failed to comply with the terms and conditions of the loan agreement, or tell plaintiff what steps would be required to effect such compliance.

-- 14. At all times during the negotiation and execution of the loan agreement plaintiff acted in good faith and with full intent to comply with all the terms and conditions of the loan agreement.

15. By reason of the foregoing, plaintiff was forced to seek other sources of financing to meet various commitments made in the course of the development of the supermarket in Ridgefield, New Jersey.

16. Such commitments have been made on the strength of the loan agreement between plaintiff and defendant.

FIRST CAUSE OF ACTION:

17. Plaintiff was able to negotiate and close a loan of only Seven Hundred Thousand (\$700,000) Dollars for its project, compared to the One Million, Three Hundred Thousand (\$1,300,000) Dollars to which defendant had committed itself.

18. The interest rate to be charged plaintiff by defendant was a maximum of eleven (11%) percent per year, which on Seven Hundred Thousand (\$700,000) Dollars per year, or over the five-year term of the agreement, would have been Three Hundred Eighty-Five Thousand (\$385,000) Dollars.



19. The interest rate charged by the party who loaned plaintiff the sum of Seven Hundred Thousand (\$700,000) Dollars was thirteen (13) percent per year plus Seven Thousand (\$7,000) Dollars additional interest, for a total of Five Hundred Two Thousand (\$502,000) Dollars over the five-year term of the loan.

20. Plaintiff has been damaged thereby in the sum of One Hundred Seventeen Thousand (\$117,000) Dollars.

SECOND CAUSE OF ACTION:

21. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 20 with the same force and effect as if fully set forth at length.

22. Plaintiff has been damaged in the amount of Thirteen Thousand (\$13,000) Dollars by reason of defendant's refusal to return said amount, given by plaintiff to defendant as a "good faith deposit".

THIRD CAUSE OF ACTION:

23. Plaintiff repeats and realleges Paragraphs 1 through 22 of the complaint as if fully set forth at length.

24. As a result of defendant's precluding plaintiff from obtaining timely adequate financing to meet its development commitments, plaintiff was unable to complete development of the supermarket, and was required to pay to its lessor, GENESCO, INC., the sum of \$36,352.00 in rent for a period of 119 days during which plaintiff had no use of the property.

FOURTH CAUSE OF ACTION:

25. Plaintiff repeats and realleges Paragraphs 1 through 24 of the complaint as if fully set forth at length.

26. As a result of defendant's precluding plaintiff from obtaining timely adequate financing to meet its development commitments, plaintiff was unable to operate the supermarket it eventually constructed, and was forced to lease said premises to another operator of supermarkets, SINGER'S SUPERMARKETS, INC., a New Jersey corporation, for a period of approximately eighteen (18) years, with renewal options that would total thirty-five (35) years, a potential fifty-three (53) years of occupancy.

27. Defendant's acts caused plaintiff to lose profits in the approximate amount of \$624,000 per year during the anticipated term of occupancy and operation of the supermarket.

28. By reason of the foregoing, plaintiff has been damaged by anticipated loss of profit in the amount of \$11,232,000.

WHEREFORE, plaintiff demands judgment as follows:

- |                                   |                   |
|-----------------------------------|-------------------|
| 1. On the First Cause of Action:  | \$117,000         |
| 2. On the Second Cause of Action: | 13,000            |
| 3. On the Third Cause of Action:  | 36,352            |
| 4. On the Fourth Cause of Action: | <u>11,232,000</u> |

Total.....\$11,398,352

together with reasonable attorneys' fees, costs and disbursements, and interest from August 1, 1973.

SHAW and LEVINE  
Office and P.O. Address  
770 Lexington Avenue  
New York, New York 10021

By Jess I. Levine  
A Member of the Firm



# ALISON MORTGAGE INVESTMENT TRUST

1900 AVENUE OF THE STARS, SUITE 2200  
LOS ANGELES, CALIFORNIA 90007  
(213) 553-1510

May 1, 1973

The Bohack Corporation  
4825 Metropolitan Avenue  
Brooklyn, New York 11237

Re: Bohack Supermarket  
Commitment No. 1070

Gentlemen:

By this letter, Alison Mortgage Investment Trust, ("Alison") agrees to make a loan (the "loan") to the Borrower listed below ("Borrower") and Borrower agrees to accept the loan, all subject to the following terms and conditions:

Borrower:

The Bohack Corporation, A New York Corporation.

Amount:

\$1,300,000

Term:

5 years. Borrower may upon 60 days notice request an extension of 5 years in the loan term in the form of one 2 year and one subsequent 3 year incremental extension, effective, however, only upon Alison's approval.

Interest Rate:

The greater of 10-1/2% or 4% above the Bank of America's "prime rate" adjusted monthly, however, not to exceed 11%, plus additional interest in the amount of \$13,000 payable at closing.

Payments:

Interest obligation shall become due monthly on the first of each month in the amount of the interest accrued to said date on the outstanding principal balance of the loan. Interest will be computed on an actual day basis with a 360 day year. A late payment charge will be provided for in the amount of four per cent (4%) of each delinquent installment. Each payment will be accompanied by whatever payments toward impounds for taxes and insurance may be specified by Alison based on Alison's estimates. All payments are to be made to Alison or its depository as directed by Alison.

Security:

The loan shall be secured by (a) a first mortgage or first deed of trust on the real property consisting of the



Leasehold Estate created by that Lease executed on April 24, 1972, by and between Genesco, Inc. as Lessor and The Bohack Corporation as Lessee. Said Leasehold Estate consists of approximately eleven acres of land on which will be constructed a 95,400 square foot supermarket and home center store. Said Leasehold Estate is commonly known as 321 Broad Avenue, Ridgefield, New Jersey, and more particularly described in Exhibit "A" annexed hereto and made a part hereof (the "Property"), (b) a security interest in all furniture, fixtures, equipment and other personal property owned by Borrower and located on the Property or used in the operation of the Property, provided however that any such personal property leased for such purposes shall be the subject of an assignment to Alison of the leasehold interest held therein, (c) a security interest in all building materials and equipment of every character and description, and all other property and things now owned or hereafter acquired, used or useful in connection with the construction of the building and improvements erected on the Property, wherever the same may be located, whether on or adjacent to the property, in storage or otherwise, (d) an assignment of all rentals relating to the Property, and (e) assignment of the lessor's interest in all the leases on the Property.

Prepayment: The loan may not be prepaid during the first 36 months of the loan term. Thereafter upon 60 days written notice, the loan may be prepaid in whole but not in part on any interest payment date upon payment of a penalty in the amount of one percent of the total commitment.

Site Inspection: Alison's obligations hereunder are subject to its approval of the results of a site inspection to be made prior to closing by Alison or its representative. Expenses in the amount of \$400 each shall be paid by Borrower for such inspection and for additional inspections to be made at the option of Alison not more frequently than annually thereafter. Alison, at its own expense, may cause additional inspections to be made at such times as it deems appropriate, and wherever possible such additional inspections will be made in conjunction with other inspections made in the local area.

Completion of Improvements: The Borrower shall furnish Alison with copies of final plans and specifications approved by applicable governmental authority and signed by the architect, the appraiser, and the Borrower which shall be subject to approval by Alison. The completed improvements shall conform substantially to the Alison approved final plans and specifications and shall be subject to Alison's final inspection. In addition, Alison shall be furnished with:

- (1) A fixed price contract for completion of the improvements in accordance with the signed plans, which shall be in form and content acceptable to Alison and signed by an acceptable general contractor.



A-87

D.H.P. *[initials]*

~~A dual-obligee performance and payment bond~~  
written on the general contractor by a surety  
acceptable to Alison on the standard AIA bond  
form.

3. A certification from a licensed civil engineer, that the plans and specifications for the foundations will be adequate for the subsoil conditions on the property. The certification should be supported with all necessary data such as borings and soil report. Upon completion of the improvements, the engineer shall personally inspect the foundations and certify that they have been completed in accordance with the plans and specifications, and that they are adequate and satisfactory in all respects.
4. Periodic certificates from a supervising architect or engineer approved by Alison that the improvements are being completed substantially in accordance with the approved plans and specifications and in compliance with all applicable building codes, rules, regulations and requirements of applicable regulatory governmental authority.
5. A final certificate from the general contractor that the improvements have been completed substantially in accordance with the approved plans and specifications and in compliance with all applicable building codes, rules, regulations and requirements of applicable regulatory governmental authority, and that all bills and expenses in connection with the construction have been paid, or that arrangements satisfactory to Alison have been made for the payment of same.

Cost Breakdown: Borrower shall furnish Alison and the supervising architect with a proposed completion and draw schedule, and an audited cost breakdown of construction clearly identifying development, construction, financing (including an adequate interest reserve), contingency and all other direct and indirect costs, which shall be subject to the approval of Alison and the supervising architect. The approved cost breakdown will be the maximum amount of Alison's loan, notwithstanding any other provision herein to the contrary. In the event the cost breakdown exceeds the amount of this commitment, Borrower will be required to provide Alison with satisfactory evidence that funds in the amount of such excess have been advanced by Borrower in a form acceptable to Alison before Alison shall have any obligation to advance the proceeds of the loan. If at any time during construction Alison



shall determine that the loan funds remaining to be advanced will not be sufficient to complete the improvements in accordance with the plans and specifications, Borrower shall be required to advance funds in the amount of such deficit, as determined by Alison, before Alison shall have any further obligation to advance the proceeds of the loan.

Commencement: Alison reserves the right to cancel this agreement and to terminate its obligations hereunder if construction of the improvement is commenced prior to the closing of the loan. After closing, Borrower agrees to commence construction within 30 days.

Funding: Alison shall disburse the proceeds of the loan to the Borrower, or at Alison's option directly to the general contractor and the subcontractors as follows: (1) at the closing, an amount to be agreed upon by Alison and Borrower after receipt and approval by Alison of the detailed cost breakdown referred to above; (2) thereafter advances will be made not more frequently than monthly in the amount of 90% of the actual cost on place of improvements on the Property as evidenced by paid bills and lien waivers approved by Alison and certified to by the Borrower, the general contractor and the supervising architect, but not to exceed 90% of the total loan amount until Alison shall have received satisfactory evidence that the improvements have been completed in accordance with the plans and specifications and the requirements of applicable governmental authority, and that all bills therefor have been paid; (3) at the time of each draw, all interest accrued to date will be advanced directly to Alison from the interest reserve; (4) there shall, however, be withheld in reserve an amount equal to the pro-rata amount required as estimated by Alison for taxes, assessments and similar charges during the construction period, and for closing costs of all take-out financing.

Inspection and Servicing: All fees of supervising architect and servicing agent to be selected by Alison shall be paid by Borrower.

Insurance: In addition to the physical damage insurance required by the "General Conditions to Agreement" attached hereto, Borrower shall provide satisfactory evidence of such other insurance as Alison may require, including, without limitation, public liability, business interruption, builder's risk non-reporting, rent loss and workman's compensation insurance.



Special Conditions: The obligations of Alison to close and fund the loan are specifically made subject to all of the provisions of the "General Conditions to Agreement" attached hereto and to the following additional conditions:

- (1) Alison shall have approved all utility rights affecting the Property.
- (2) Alison shall have approved a report of a registered civil engineer concerning the soil and drainage conditions on the Property.
- (3) Receipt and approval by Alison of current financial statements of The Bohack Corporation and approval of Bohack credit.
- (4) Receipt and approval by Alison of financial statements on Channel Home Centers for the last 5 years.
- (5) Receipt and approval by Alison of an MAI appraisal to be submitted by an MAI appraiser to be selected from a list supplied by Alison at a later date.
- (6) Receipt and approval of evidence satisfactory to Alison sufficient to establish the subordinate position of the First American lien in regard to the leasehold interest of Genesco, or in the alternative the acceptance by the issuing title company of an indemnification by Bohack regarding such subordination.
- (7) Receipt and approval by Alison of all loan documents evidencing all existing debt on the Property.
- (8) Receipt and approval by Alison of all leases on the Property. Bohack shall be obligated under terms of the Alison loan documents to cure any and all defaults of the holders of any and all superior interest in the Property so as to insure the continued existence in the Bohack leasehold estate. Further that the holders of such superior Estates and/or interests shall agree that Bohack, its successors and/or assigns, shall have the right to cure such defaults. Further that all Holders of any Estate or interest in the Property acknowledge the validity of such Estate or interest.
- (9) All leases inferior to or derived from the Bohack Estate are to be assigned to Alison as additional security.



A-90

Scope of Agreement: This letter and the General Conditions to Agreement attached hereto sets forth the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior written or oral understandings with respect thereto; provided, however, that all written and oral representations made by Borrower to Alison with respect to the subject matter hereof shall survive the execution of this agreement. No modification or waiver of any provision of this agreement shall be effective unless the same shall be in writing signed by the parties hereto. This agreement letter and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State in which the Property is located.

Acceptance: Acceptance of this agreement on behalf of Borrower will be made by execution as provided on the first copy and the receipt of this letter together with a certified check for the good faith deposit described in the "General Conditions to Agreement" attached hereto by Alison Advisors, 1900 Avenue of the Stars, Suite 2200, Los Angeles, California 90067, no later than ten days from the date hereof.

Very truly yours,

ALISON MORTGAGE INVESTMENT TRUST

By: William A. Worthington  
William A. Worthington  
Vice President

Accepted this 2<sup>nd</sup> day of May 1973

The Borrower's Collection

By: James Fisher

Title: Board Chairman



GENERAL CONDITIONS TO AGREEMENT

Leases. All leases now existing or to be used on the Property are subject to approval by Alison as a condition to closing and will be delivered to Alison for inspection, together with a schedule of such leases and rentals on the Property delivered prior to closing and updated to closing, signed by Borrower, showing (1) the name of the tenant, (2) the amount of all primary and contingent rentals, (3) the term (including renewal options ), and any other provisions affecting the value of the Property as security for the loan. All lessees under these leases will at Alison's option, be advised of the assignment for security of the lessor's interest to Alison and will be put on notice not to make payments in advance of the requirements of the leases.

Title Insurance. Upon closing the loan, Borrower will furnish to Alison A. L. T. A. form of title insurance, written by a company satisfactory to Alison, containing endorsements required by Alison and showing as exceptions only those items acceptable to Alison. This title policy will furnish insurance covering all interests taken by Alison that are the subject of title insurance. The liability of the policy will be the full amount of all indebtedness against the Property which is senior to or on a parity with the loan.

Physical Damage Insurance. The buildings, and all chattel located on the Property shall be insured against physical damage in amounts and under policies issued by companies satisfactory to Alison and containing endorsements including a provision waiving any breach of warranty by Borrower and shall provide that Alison will be given 30 days written notice prior to any cancellation or modification thereof.

Survey. Borrower shall furnish to Alison a survey of the Property prepared by a licensed surveyor satisfactory to Alison and the title company issuing the title policy for this loan.



Good Faith Deposit. Upon execution and delivery hereof by Borrower a good faith deposit of 1% of the amount to be advanced by Alison will become due and payable by Borrower to Alison Advisors, to be held by it for the benefit of it, Alison and Borrower. The purpose of this deposit is to protect Alison and Alison Advisors against a loss from failure of Borrower to proceed hereunder to closing and to provide for the return of such deposit to Borrower if Borrower fulfills his obligations hereunder. If the loan is not closed as provided herein (other than through default of Alison) such deposit may be retained as liquidated damages of Alison and Alison Advisors. If however, this loan closes no later than the date provided for herein Alison Advisors, will return this deposit to Borrower.

Expenses. All out-of-pocket expenses incurred by Alison in connection with the loan and the transactions contemplated hereby, including, without limitation, fees, and disbursements of attorneys for Alison and Borrower, and premiums for title insurance and recording fees, shall be paid by Borrower, whether or not the loan shall be closed. Payments made by Borrower under this paragraph shall be in addition to the expenses described in the paragraph labeled "Check Appraisal" and "Site Inspection" herein. In the event Alison is made defendant to any litigation arising out of this agreement, Borrower agrees to pay Alison's court costs and attorney's fees in connection with such litigation except as to causes of action for which final judgement is entered against Alison. The obligations of Borrower under this paragraph shall survive the expiration or termination of this agreement.

Termination. Alison may terminate this agreement by written or telegraphic notice to Borrower in the event that (a) Borrower shall fail to comply with any term or condition hereto, (b) any representation, warranty, statement, certificate, schedule or report made herein or false or misleading in any material respect as of the time made or furnished, (c) Borrower shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator for it or for any of its property, (ii) admit in writing an inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceedings under any such law or if corporate action shall be taken by Borrower affecting any of



the foregoing, (c) any of the Property shall be materially damaged by fire or other casualty; provided, however, that Alison will not terminate this agreement by reason of any such casualty if provision satisfactory to Alison shall have been made (i) to repair the damage resulting therefrom and (ii) for the performance of Borrower's obligations with respect to the loan. The provisions of this section shall also apply to any guarantor, and will be incorporated in the loan documents as providing a basis for acceleration of the maturity of the loan.

Compliance with Law. Borrower shall furnish evidence satisfactory to Alison certifying that all the property and the use thereof comply with all applicable zoning and building laws, regulations and ordinances and all other applicable laws.

Attorney's Opinion. Closing the loan will be subject to receipt of an opinion letter from Alison's counsel stating that (a) the loan documents are enforceable in accordance with their terms, (b) the loan, the loan documents and transactions relating thereto are governed by the laws of the jurisdiction in which the Property is located and that the loan is not usurious under such laws, (c) the making of the loan will not require Alison to qualify to do business in such jurisdiction, (d) neither the making of the loan nor its existence as an outstanding obligation of the Borrower will require the payment of any taxes by Alison under the laws of such jurisdictions or the domicile of Borrower, (e) Borrower, if not an individual, is a duly formed, valid and existing partnership or corporation, as the case may be, under the laws of the applicable jurisdiction. If Alison's loan is to be subordinate to any other debt, the opinion shall also state that (f) any additional advance made under the Primary Loan other than those for the preservation of the security as described in the loan documents relating thereto, will be subordinate to Alison's loan, (g) there are no defaults existing on the Primary loan at time of closing, and (h) a foreclosure sale under the mortgage for the loan can be consummated without creating circumstances which would (i) make it difficult to obtain title insurance insuring title in the name of the successful purchaser at such sale or (ii) preclude distribution of the proceeds of such foreclosure sale in the manner prescribed by the laws in the jurisdiction in which the Property is located.

Check Appraisal. Alison may at its option and at Borrower's expense, make or cause to be made a check appraisal of the Property. The cost of such check appraisal will be \$ 00.



Appraisal. Alison's obligations hereunder shall be subject to receipt and approval by Alison of an appraisal made by an appraiser acceptable to Alison, which shall show separately the value of the land, the improvements, and personalty on the Property, and shall show stabilized net income, before depreciation, acceptable to Alison. All appraisals shall be addressed and sent directly to Alison.

Approval of Documents. All instruments and documents required hereby or affecting the Property or relating to Borrower's capacity and authority to make the loan and to execute the documents relating thereto, and such other documents, instruments, architects' and engineer's certificates, opinions and assurances as Alison may reasonably request, and all procedures in connections herewith, shall be subject to the approval of Alison and its counsel as to form and substance. Alison shall, however, have no affirmative duty to approve any plans, specifications, exhibits, instruments, title reports, surveys or other documents, unless requested to do so by the Borrower; and the failure of Alison to do so or to make any inspections without written request therefor having been made by the Borrower to Alison prior to the time of said approval or inspection shall not be deemed a waiver by Alison of the necessity for said approval or inspection.

Indemnification. Any brokerage commission or finder's fee in connection with the transaction contemplated hereby shall be payable by Borrower, and not by Alison, and Borrower shall indemnify Alison and hold Alison harmless against any claim of any broker or finder arising out of the transactions contemplated hereby. The obligations of Borrower under this paragraph shall survive the expiration or termination of this agreement.

Assignment. This agreement shall not be assigned or assignable, by operation of law or otherwise.



Right of Acceleration. The loan documents will contain a clause providing that in the event of any default under the loan documents, any event of a type which would cause termination of this agreement as provided herein, or in the event Borrower shall attempt to sell, assign or transfer all or any substantial part of the Property or its interest therein, Alison shall have the immediate right to accelerate the maturity of the loan. Following any such acceleration and prior to actual foreclosure sale any tender of the amount to satisfy the entire indebtedness shall be deemed to be a voluntary prepayment and such payment, to the extent permitted by law, must include the premium required under the prepayment provision or if at that time there is no prepayment privilege, then such payment, to the extent permitted by law, will include a premium for such prepayment of five (5%) percent of the then principal balance.

Closing Date. The loan shall close on such date as shall be mutually satisfactory to Borrower and Alison but in no event later than 60 days from the date of this agreement. In the event that closing of the loan shall not take place by that time, this agreement shall expire and Alison shall have no further obligation hereunder, unless by written notice to Borrower Alison shall extend such time of closing.

Financial Statements. Alison's obligations hereunder shall be subject to receipt and approval of credit reports and financial statements on Borrower and Guarantors (and all principals thereof if not individuals) current to within 90 days of closing. In addition, Alison shall be furnished with balance sheets and statements of income and expense for the Property for the three previous fiscal years, and for each quarter subsequent to the most recent fiscal year. After closing, Alison shall be provided with balance sheets and statements of income and expense on the Property within 45 days after the close of each fiscal year and each interim quarterly period. All such statements shall be certified in a manner satisfactory to Alison by the chief financial officer of Borrower or the certified public accountant who regularly keeps Borrowers books, and by all Guarantors. The failure to furnish such statements or any material error or omission therein shall relieve Alison of any obligation hereunder and constitute an event of default under any loan document executed pursuant to this agreement.



A-96

June 21, 1973

Alison Mortgage Investment Trust  
1900 Avenue of the Stars, Suite 2200  
Los Angeles, California 90067

Att: Mr. Don L. Smith  
Senior Vice President

Re: Bohack Supermarket  
Commitment #1070

Gentlemen:

The Bohack Corporation stands ready to close upon the above referred to mortgage commitment for a leasehold mortgage at 321 Broad Avenue, Ridgefield, New Jersey.

There is little gained in reminding Alison that Bohack has forwarded every document requested, whether by Alison Mortgage Investment Trust or their local counsel; with more than diligent dispatch. More to the point is the fact that The Bohack Corporation is suffering irreparable harm by reason of Alison Mortgage Investment Trust's failure to close in diligent manner as Bohack has acted with reliance upon that mortgage commitment.

Demand is made for a closing forthwith, in the failure of which The Bohack Corporation will hold Alison Mortgage Investment Trust responsible for all its damages accrued or accruing and reserves to itself all its remedies at law or equity available.

Very truly yours,

THE BOHACK CORPORATION

MAF/ec1  
Air Mail, Certified Mail,  
Return Receipt Requested

Morton A. Frankfurt  
Vice President  
Resident Counsel



A-97

July 2, 1973

TELEGRAM TO:

ALISON MORTGAGE INVESTMENT TRUST  
1900 AVENUE OF THE STARS, SUITE 2200  
LOS ANGELES, CALIFORNIA 90067

RE: COMMITMENT #1070

FAILURE TO CLOSE ARBITRARY AND WILLFUL ON THE  
PART OF ALISON MORTGAGE INVESTMENT TRUST. DEMAND IS MADE  
FOR AN EXTENSION OF COMMITMENT UNTIL SUCH TIME AS A CLOSING  
MAY BE ACCOMPLISHED.

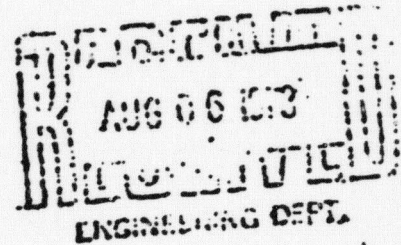
THE BOHACK CORPORATION  
BY: MORTON A. FRANKFURT  
VICE PRESIDENT  
RESIDENT COUNSEL

TIME SENT: 5:30 P.M.

Call in  
3:25 P.M.  
6:30

Alison Mortgage Investment Trust  
10250 Wilshire Blvd., Suite 2100  
Los Angeles, California 90024  
213/476-1101

A-98



**ALISON**

August 1, 1973

Mr. Franklin Knobel  
Chairman of the Board  
The Bohack Corporation  
48-25 Metropolitan Avenue  
Brooklyn, New York 11237

Re: Bohack  
Commitment No. 1070

Dear Mr. Knobel:

This is to confirm our previous oral and written advice to you of our intention not to proceed to fund the above captioned loan commitment to you by reason of your failure to proceed in a manner calculated to comply with the terms of the aforesaid commitment.

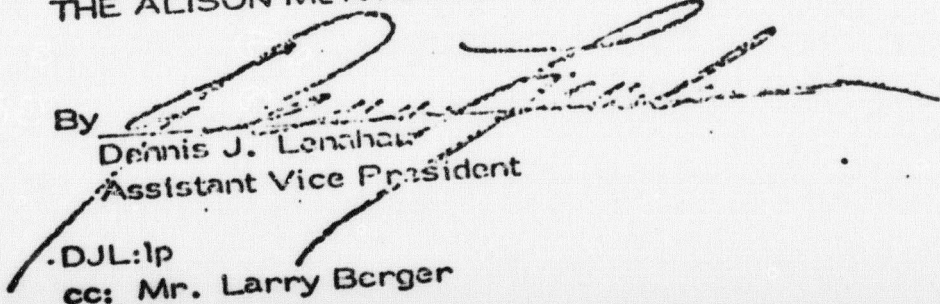
Upon receipt of general releases running to the Trust, Alison Advisors and our local counsel, Lasser, Lasser, Sarokin & Hochman, Esq., we will be happy to furnish you with the general release and refund of that portion of your loan fee not needed to cover our expenses in connection with the transaction.

Should you fail to deliver the aforesaid releases nothing contained herein shall in any way limit our rights to proceed against you by reason of your willful failure to comply with the terms of said commitment or otherwise.

Very truly yours,

THE ALISON MORTGAGE INVESTMENT TRUST

By

  
Dennis J. Lenahan  
Assistant Vice President

.DJL:lp

cc: Mr. Larry Berger



A-99

ANSWER

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

THE BOHACK CORPORATION,

Plaintiff,

-against-

ALISON MORTGAGE INVESTMENT TRUST,

Defendant.

LITIGATION DEPT.	
FILED	9/14/74
SIGNED	
SERVED	9/13/74
RECEIVED	
ORDERED	
ENTERED AND	
DISCOUNT CLAIM	
REGISTER	
EXAMINED	9/12/74

(JBW)

Defendant, ALISON MORTGAGE INVESTMENT TRUST hereinafter  
"Alison"), for its answer to the complaint and for its Counter-  
claim herein against THE BOHACK CORPORATION (hereinafter  
"Bohack"), states:

1. Denies each and every allegation contained in Para-  
graphs 8, 13, 14, 15, 16, 20, 22, 24, 26, 27 and 28 of the  
Complaint.

2. Denies each and every allegation contained in Paragraph  
4 of the Complaint, except admits that Alison agreed to lend  
plaintiff funds pursuant to a written contract, a true copy of  
which is annexed hereto as Exhibit "A", and defendant respectfully  
refers to said agreement for the terms thereof.

3. Denies each and every allegation contained in Paragraph  
5 of the Complaint, except admits that plaintiff signed Exhibit  
"A" hereto in May of 1973.

4. Denies each and every allegation contained in Paragraph  
7 of the Complaint and specifically denies that any of the follow-  
ing conditions precedent to defendant's liability were performed  
by plaintiffs, did occur or were prevented by acts of defendant:

(a) Receipt by Alison of plaintiff's financial state-  
ments current to within ninety days of closing;

(b) Receipt by Alison of all leases on the subject  
property together with a schedule showing primary and contingent  
rentals and other provisions affecting the value of the property

1 as security for the loan;

2 (c) Plaintiff's furnishing Alison with evidence that  
3 it would advance construction costs in excess of \$1,300,000;

4 (d) Plaintiff's furnishing Alison with an audited cost  
5 breakdown clearly identifying development, construction, financing,  
6 contingency and all other direct and indirect costs;

7 (e) Plaintiff's furnishing Alison with requested non-  
8 disturbance and estoppel certificates with respect to plaintiff's  
9 interest in the property from the holders of other interests in  
10 the subject property;

11 (f) An opinion of Alison's special New Jersey counsel  
12 that a foreclosure sale under the mortgage could be consummated  
13 without creating circumstances which would make it difficult to  
14 insure title in the name of the purchaser;

15 (g) Approval as to form and substance by Alison's  
16 special New Jersey counsel of such documents, instruments, opinions  
17 and assurances as Alison might have reasonably requested, including  
18 requested assurances that the covenants of the Genesee and Boback  
19 leases, including the rights to receive notice of defaults and to  
20 cure such defaults, ran to Alison;

21 (h) The requested legal opinion of Alison's special  
22 New Jersey counsel that the Channel leasehold documents conformed  
23 to the transaction contemplated by the commitment;

24 (i) Alison's approval of leasehold security;

25 (j) Alison's approval of the Channel security;

26 (k) Alison's approval of the practical and control  
27 aspects of the project;

28 (l) Alison's approval of the "cash flow stream";

29 (m) Alison's approval of plaintiff's credit;

30 (n) Alison's approval of all debt on the property; and

31 (o) Other conditions precedent required by the  
32 agreement between the parties.



1           5. Denies each and every allegation contained in  
2 Paragraph 12 of the Complaint, except admits that defendant  
3 sent a letter to plaintiff on August 1, 1973, a true copy of  
4 which is annexed to the Complaint as Exhibit "D", and defendant  
5 respectfully refers to said letter for the terms thereof.

6           6. Denies any knowledge or information sufficient to form  
7 a belief as to the truth of the allegations contained in Para-  
8 graphs 17 and 19 of the Complaint.

9           7. Denies each and every allegation contained in Paragraph  
10 18 of the Complaint, except admits that the agreement between the  
11 parties provided for a maximum interest rate as is more fully set  
12 forth in Exhibit "A" hereto.

13           8. With respect to Paragraphs 21, 23 and 25 of the Com-  
14 plaint, defendant repeats and realleges its answers to all of the  
15 paragraphs referred to therein which are realleged, and incorp-  
16 orates its answers thereto as though fully set forth herein.

17  
18                               FOR A COUNTERCLAIM

19                               AGAINST BOHACK  
20

21           9. Jurisdiction over Alison's Counterclaim is based upon  
22 Rule 13(a) of the Federal Rules of Civil Procedure.

23           10. Alison is a California real estate investment trust  
24 with its principal place of business at 10960 Wilshire Boulevard,  
25 Los Angeles, California.

26           11. Bohack is, upon information and belief, a New York  
27 corporation with its principal place of business at 48-25 Metro-  
28 politan Avenue, Brooklyn, New York.

29           12. In or about May of 1973, Alison and Bohack entered a  
30 written contract, a true copy of which is annexed hereto as  
31 Exhibit "A", whereby Alison agreed to loan Bohack funds if certain  
32 conditions precedent were performed or did occur.

1        13. The Expenses Section of the General Conditions portion  
2 of Exhibit "A" provides, in pertinent part:

3                "In the event Alison is made defendant to any  
4 litigation arising out of this agreement, Borrower  
5 agrees to pay Alison's court costs and attorneys'  
6 fees in connection with such litigation except  
7 as to causes of action for which final judgment  
8 is entered against Alison. The obligations of  
9 Borrower under this paragraph shall survive the  
10 expiration or termination of this agreement."

11        14. Bohack, the "Borrower" within the meaning of the  
12 aforesaid provisions of Exhibit "A", made Alison a defendant to  
13 this litigation arising out of the aforesaid agreement between  
14 the parties.

15        15. Alison has so far incurred court costs and attorneys'  
16 fees in connection with this litigation in the amount of at least  
17 Thirty Thousand Dollars (\$30,000) and anticipates incurring  
18 substantial additional court costs and attorneys' fees.

19        16. Final judgment has not been entered against Alison with  
20 respect to any of the claims alleged in the Complaint; and Bohack  
21 has not paid Alison's court costs and attorneys' fees in connec-  
22 tion with this litigation.

23        17. Alison has performed all conditions and covenants  
24 required to be performed on its part precedent to Bohack's obli-  
25 gation to pay the aforesaid court costs and attorneys' fees.

26        18. By reason of the foregoing, Alison has been damaged in  
27 an amount as yet to be definitely ascertained; and, when the  
28 aforesaid damage is definitely ascertained, defendant begs leave  
29 of Court to amend this Counterclaim so to state.

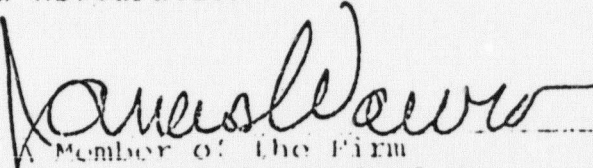
30        WHEREFORE, Alison demands judgment dismissing the Complaint  
31 and damages in the amount of at least Thirty Thousand Dollars.  
32 (\$30,000), together with the costs and disbursements of this



1 action and interest from April 2, 1974.

2 SHAWIN & WAWRO  
3 a Law Corporation

4 By

  
5 A Member of the Firm  
6 of Counsel for Defendant  
7 Alison Mortgage Investment Trust  
8 1801 Century Park East  
9 Los Angeles, California 90067  
10 Tel. No.: 213-556-0200

11 SPENGLER, CARLSON, GUBAR & CHURCHILL  
12 Attorneys for Defendant  
13 Alison Mortgage Investment Trust  
14 280 Park Avenue  
15 New York, New York 10017  
16 Tel. No.: 212-682-4444

17 TO: Messrs. Shaw & Levine  
18 Attorneys for The Bohack Corporation  
19 770 Lexington Avenue  
20 New York, New York 10021  
21  
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23  
24  
25  
26  
27  
28  
29

## ALISON MORTGAGE INVESTMENT TRUST

1900 AVENUE OF THE STARS, SUITE 2200

LOS ANGELES, CALIFORNIA 90067

(213) 553-1519

May 1, 1973

The Bohack Corporation  
4825 Metropolitan Avenue  
Brooklyn, New York 11237

Re: Bohack Supermarket  
Commitment No. 1070

Gentlemen:

By this letter, Alison Mortgage Investment Trust, ("Alison") agrees to make a loan (the "loan") to the Borrower listed below ("Borrower") and Borrower agrees to accept the loan, all subject to the following terms and conditions:

Borrower: The Bohack Corporation, A New York Corporation.

Amount: \$1,300,000

Term: 5 years. Borrower may upon 60 days notice request an extension of 5 years in the loan term in the form of one 2 year and one subsequent 3 year incremental extension, effective, however, only upon Alison's approval.

Interest Rate: The greater of 10-1/2% or 4% above the Bank of America's "prime rate" adjusted monthly, however, not to exceed 11%, plus additional interest in the amount of \$13,000 payable at closing.

Payments: Interest obligation shall become due monthly on the first of each month in the amount of the interest accrued to said date on the outstanding principal balance of the loan. Interest will be computed on an actual day basis with a 360 day year. A late payment charge will be provided for in the amount of four percent (4%) of each delinquent installment. Each payment will be accompanied by whatever payments toward impounds for taxes and insurance may be specified by Alison based on Alison's estimates. All payments are to be made to Alison or its depository as directed by Alison.

Security: The loan shall be secured by (a) a first mortgage or first deed of trust on the real property consisting of the



Leasehold Estate created by that Lease executed on April 24, 1972, by and between Genesco, Inc. as Lessor and The Bohack Corporation as Lessee. Said Leasehold Estate consists of approximately eleven acres of land on which will be constructed a 95,400 square foot supermarket and home center store. Said Leasehold Estate is commonly known as 321 Broad Avenue, Ridgefield, New Jersey, and more particularly described in Exhibit "A" annexed hereto and made a part hereof (the "Property"), (b) a security interest in all furniture, fixtures, equipment and other personal property owned by Borrower and located on the Property or used in the operation of the Property, provided however that any such personal property leased for such purposes shall be the subject of an assignment to Alison of the leasehold interest held therein, (c) a security interest in all building materials and equipment of every character and description, and all other property and things now owned or hereafter acquired, used or useful in connection with the construction of the building and improvements erected on the Property, wherever the same may be located, whether on or adjacent to the property, in storage or otherwise, (d) an assignment of all rentals relating to the Property, and (e) assignment of the lessor's interest in all the leases on the Property.

Prepayment: The loan may not be prepaid during the first 36 months of the loan term. Thereafter upon 60 days written notice, the loan may be prepaid in whole but not in part on any interest payment date upon payment of a penalty in the amount of one percent of the total commitment.

Site Inspection: Alison's obligations hereunder are subject to its approval of the results of a site inspection to be made prior to closing by Alison or its representative. Expenses in the amount of \$400 each shall be paid by Borrower for such inspection and for additional inspections to be made at the option of Alison not more frequently than annually thereafter. Alison, at its own expense, may cause additional inspections to be made at such times as it deems appropriate, and wherever possible such additional inspections will be made in conjunction with other inspections made in the local area.

Completion of Improvements: The Borrower shall furnish Alison with two copies of final plans and specifications approved by applicable governmental authority and signed by the architect, the appraiser, and the Borrower, which shall be subject to approval by Alison. The completed improvements shall conform substantially to the Alison approved final plans and specifications and shall be subject to Alison's final inspection. In addition, Alison shall be furnished with:

- (1) A fixed price contract for completion of the improvements in accordance with the signed plans, which shall be in form and content acceptable to Alison and signed by an acceptable general contractor.



- D.H.S.* *SV* 2. ~~A dual-obligee performance and payment bond~~  
written on the general contractor by a surety  
acceptable to Alison on the standard AIA bond  
form.
3. A certification from a licensed civil engineer, that the plans and specifications for the foundations will be adequate for the subsoil conditions on the property. The certification should be supported with all necessary data such as borings and soil report. Upon completion of the improvements, the engineer shall personally inspect the foundations and certify that they have been completed in accordance with the plans and specifications, and that they are adequate and satisfactory in all respects.
4. Periodic certificates from a supervising architect or engineer approved by Alison that the improvements are being completed substantially in accordance with the approved plans and specifications and in compliance with all applicable building codes, rules, regulations and requirements of applicable regulatory governmental authority.
5. A final certificate from the general contractor that the improvements have been completed substantially in accordance with the approved plans and specifications and in compliance with all applicable building codes, rules, regulations and requirements of applicable regulatory governmental authority, and that all bills and expenses in connection with the construction have been paid, or that arrangements satisfactory to Alison have been made for the payment of same.

Cost Breakdown: Borrower shall furnish Alison and the supervising architect with a proposed completion and draw schedule, and an audited cost breakdown of construction clearly identifying development, construction, financing (including an adequate interest reserve), contingency and all other direct and indirect costs, which shall be subject to the approval of Alison and the supervising architect. The approved cost breakdown will be the maximum amount of Alison's loan, notwithstanding any other provision herein to the contrary. In the event the cost breakdown exceeds the amount of this commitment, Borrower will be required to provide Alison with satisfactory evidence that funds in the amount of such excess have been advanced by Borrower in a form acceptable to Alison before Alison shall have any obligation to advance the proceeds of the loan. If at any time during construction Alison



shall determine that the loan funds remaining to be advanced will not be sufficient to complete the improvements in accordance with the plans and specifications, Borrower shall be required to advance funds in the amount of such deficit, as determined by Alison, before Alison shall have any further obligation to advance the proceeds of the loan.

Commencement: Alison reserves the right to cancel this agreement and to terminate its obligations hereunder if construction of the improvement is commenced prior to the closing of the loan. After closing, Borrower agrees to commence construction within 30 days.

Funding: Alison shall disburse the proceeds of the loan to the Borrower, or at Alison's option directly to the general contractor and the subcontractors as follows: (1) at the closing, an amount to be agreed upon by Alison and Borrower after receipt and approval by Alison of the detailed cost breakdown referred to above; (2) thereafter advances will be made not more frequently than monthly in the amount of 90% of the actual cost on place of improvements on the Property as evidenced by paid bills and lien waivers approved by Alison and certified to by the Borrower, the general contractor and the supervising architect, but not to exceed 90% of the total loan amount until Alison shall have received satisfactory evidence that the improvements have been completed in accordance with the plans and specifications and the requirements of applicable governmental authority, and that all bills therefor have been paid; (3) at the time of each draw, all interest accrued to date will be advanced directly to Alison from the interest reserve; (4) there shall, however, be withheld in reserve an amount equal to the pro-rata amount required as estimated by Alison for taxes, assessments and similar charges during the construction period, and for closing costs of all take-out financing.

Inspection and Servicing: All fees of supervising architect and servicing agent to be selected by Alison shall be paid by Borrower.

Insurance: In addition to the physical damage insurance required by the "General Conditions to Agreement" attached hereto, Borrower shall provide satisfactory evidence of such other insurance as Alison may require, including, without limitation, public liability, business interruption, builder's risk non-reporting, rent loss and workman's compensation insurance.



Special Conditions: The obligations of Alison to close and fund the loan are specifically made subject to all of the provisions of the "General Conditions to Agreement" attached hereto and to the following additional conditions:

- (1) Alison shall have approved all utility rights affecting the Property.
- (2) Alison shall have approved a report of a registered civil engineer concerning the soil and drainage conditions on the Property.
- (3) Receipt and approval by Alison of current financial statements of The Bohack Corporation and approval of Bohack credit.
- (4) Receipt and approval by Alison of financial statements on Channel Home Centers for the last 5 years.
- (5) Receipt and approval by Alison of an MAI appraisal to be submitted by an MAI appraiser to be selected from a list supplied by Alison at a later date.
- (6) Receipt and approval of evidence satisfactory to Alison sufficient to establish the subordinate position of the First American lien in regard to the leasehold interest of Genesco, or in the alternative the acceptance by the issuing title company of an indemnification by Bohack regarding such subordination.
- (7) Receipt and approval by Alison of all loan documents evidencing all existing debt on the Property.
- (8) Receipt and approval by Alison of all leases on the Property. Bohack shall be obligated under terms of the Alison loan documents to cure any and all defaults of the holders of any and all superior interest in the Property so as to insure the continued existence in the Bohack leasehold estate. Further that the holders of such superior Estates and/or interests shall agree that Bohack, its successors and/or assigns, shall have the right to cure such defaults. Further that all Holders of any Estate or interest in the Property acknowledge the validity of such Estate or interest.
- (9) All leases inferior to or derived from the Bohack Estate are to be assigned to Alison as additional security.



May 1, 1973  
Bonack Supermarket  
Page six

A-109

Scope of Agreement: This letter and the General Conditions to Agreement attached hereto sets forth the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior written or oral understandings with respect thereto; provided, however, that all written and oral representations made by Borrower to Alison with respect to the subject matter hereof shall survive the execution of this agreement. No modification or waiver of any provision of this agreement shall be effective unless the same shall be in writing signed by the parties hereto. This agreement letter and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State in which the Property is located.

Acceptance: Acceptance of this agreement on behalf of Borrower will be made by execution as provided on the first copy and the receipt of this letter together with a certificate check for the good faith deposit described in the "General Conditions to Agreement" attached hereto by Alison Advisors, 1900 Avenue of the Stars, Suite 2200, Los Angeles, California 90067, no later than ten days from the date hereof.

Very truly yours,

ALISON MORTGAGE INVESTMENT TRUST

By: William A. Worthington  
William A. Worthington  
Vice President

Accepted this 2<sup>nd</sup> day of May 1973

The Bonack Corporation

By: James J. Gabel

Title: Boned Chairman



GENERAL CONDITIONS TO AGREEMENT

Leases. All leases now existing or to be used on the Property are subject to approval by Alison as a condition to closing and will be delivered to Alison for inspection, together with a schedule of such leases and rentals on the Property delivered prior to closing and updated to closing, signed by Borrower, showing (1) the name of the tenant, (2) the amount of all primary and contingent rentals, (3) the term (including renewal options), and any other provisions affecting the value of the Property as security for the loan. All lessees under these leases will at Alison's option, be advised of the assignment for security of the lessor's interest to Alison and will be put on notice not to make payments in advance of the requirements of the leases.

Title Insurance. Upon closing the loan, Borrower will furnish to Alison A.L.T.A. form of title insurance, written by a company satisfactory to Alison, containing endorsements required by Alison and showing as exceptions only those items acceptable to Alison. This title policy will furnish insurance covering all interests taken by Alison that are the subject of title insurance. The liability of the policy will be the full amount of all indebtedness against the Property which is senior to or on a parity with the loan.

Physical Damage Insurance. The buildings, and all chattel located on the Property shall be insured against physical damage in amounts and under policies issued by companies satisfactory to Alison and containing endorsements including a provision waiving any breach of warranty by Borrower and shall provide that Alison will be given 30 days written notice prior to any cancellation or modification thereof.

Survey. Borrower shall furnish to Alison a survey of the Property prepared by a licensed surveyor satisfactory to Alison and the title company issuing the title policy for this loan.



Good Faith Deposit. Upon execution and delivery hereof by Borrower a good faith deposit of 1% of the amount to be advanced by Alison will become due and payable by Borrower to Alison Advisors, to be held by it for the benefit of it, Alison and Borrower. The purpose of this deposit is to protect Alison and Alison Advisors against a loss from failure of Borrower to proceed hereunder to closing and to provide for the return of such deposit to Borrower if Borrower fulfills his obligations hereunder. If the loan is not closed as provided herein (other than through default of Alison) such deposit may be retained as liquidated damages of Alison and Alison Advisors. If however, this loan closes no later than the date provided for herein Alison Advisors, will return this deposit to Borrower.

Expenses. All out-of-pocket expenses incurred by Alison in connection with the loan and the transactions contemplated hereby, including, without limitation, fees, and disbursements of attorneys for Alison and Borrower, and premiums for title insurance and recording fees, shall be paid by Borrower, whether or not the loan shall be closed. Payments made by Borrower under this paragraph shall be in addition to the expenses described in the paragraph labeled "Check Appraisal" and "Site Inspection" herein. In the event Alison is made defendant to any litigation arising out of this agreement, Borrower agrees to pay Alison's court costs and attorney's fees in connection with such litigation except as to causes of action for which final judgement is entered against Alison. The obligations of Borrower under this paragraph shall survive the expiration or termination of this agreement.

Termination. Alison may terminate this agreement by written or telegraphic notice to Borrower in the event that (a) Borrower shall fail to comply with any term or condition hereto, (b) any representation, warranty, statement, certificate, schedule or report made herein or false or misleading in any material respect as of the time made or furnished, (c) Borrower shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator for it or for any of its property, (ii) admit in writing an inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceedings under any such law or if corporate action shall be taken by Borrower affecting any of



the foregoing, (c) any of the Property shall be materially damaged by fire or other casualty; provided, however, that Alison will not terminate this agreement by reason of any such casualty if provision satisfactory to Alison shall have been made (i) to repair the damage resulting therefrom and (ii) for the performance of Borrower's obligations with respect to the loan. The provisions of this section shall also apply to any guarantor, and will be incorporated in the loan documents as providing a basis for acceleration of the maturity of the loan.

Compliance with Law. Borrower shall furnish evidence satisfactory to Alison certifying that all the property and the use thereof comply with all applicable zoning and building laws, regulations and ordinances and all other applicable laws.

Attorney's Opinion. Closing the loan will be subject to receipt of an opinion letter from Alison's counsel stating that (a) the loan documents are enforceable in accordance with their terms, (b) the loan, the loan documents and transactions relating thereto are governed by the laws of the jurisdiction in which the Property is located and that the loan is not usurious under such laws, (c) the making of the loan will not require Alison to qualify to do business in such jurisdiction, (d) neither the making of the loan nor its existence as an outstanding obligation of the Borrower will require the payment of any taxes by Alison under the laws of such jurisdictions or the domicile of Borrower, (e) Borrower, if not an individual, is a duly formed, valid and existing partnership or corporation, as the case may be, under the laws of the applicable jurisdiction. If Alison's loan is to be subordinate to any other debt, the opinion shall also state that (f) any additional advance made under the Primary Loan other than those for the preservation of the security as described in the loan documents relating thereto, will be subordinate to Alison's loan, (g) there are no defaults existing on the Primary loan at time of closing, and (h) a foreclosure sale under the mortgage for the loan can be consummated without creating circumstances which would (i) make it difficult to obtain title insurance insuring title in the name of the successful purchaser at such sale or (ii) preclude distribution of the proceeds of such foreclosure sale in the manner prescribed by the laws in the jurisdiction in which the Property is located.

Check Appraisal. Alison may at its option and at Borrower's expense, make or cause to be made a check appraisal of the Property. The cost of such check appraisal will be \$500.



Appraisal. All obligations hereunder shall be subject to receipt and approval by Alison of an appraisal made by an appraiser acceptable to Alison, which shall show separately the value of the land, the improvements, and personalty on the Property, and shall show stabilized net income, before depreciation, acceptable to Alison. All appraisals shall be addressed and sent directly to Alison.

Approval of Documents. All instruments and documents required hereby or affecting the Property or relating to Borrower's capacity and authority to make the loan and to execute the documents relating thereto, and such other documents, instruments, architects' and engineer's certificates, opinions and assurances as Alison may reasonably request, and all procedures in connections herewith, shall be subject to the approval of Alison and its counsel as to form and substance. Alison shall, however, have no affirmative duty to approve any plans, specifications, exhibits, instruments, title reports, surveys or other documents, unless requested to do so by the Borrower; and the failure of Alison to do so or to make any inspections without written request therefor having been made by the Borrower to Alison prior to the time of said approval or inspection shall not be deemed a waiver by Alison of the necessity for said approval or inspection.

Indemnification. Any brokerage commission or finder's fee in connection with the transaction contemplated hereby shall be payable by Borrower, and not by Alison, and Borrower shall indemnify Alison and hold Alison harmless against any claim of any broker or finder arising out of the transactions contemplated hereby. The obligations of Borrower under this paragraph shall survive the expiration or termination of this agreement.

Assignment. This agreement shall not be assigned or assignable, by operation of law or otherwise.

Right of Acceleration. The loan documents will contain a clause providing that in the event of any default under the loan documents, any event of a type which would cause termination of this agreement as provided herein, or in the event Borrower shall attempt to sell, assign or transfer all or any substantial part of the Property or its interest therein, Alison shall have the immediate right to accelerate the maturity of the loan. Following any such acceleration and prior to actual foreclosure sale any tender of the amount to satisfy the entire indebtedness shall be deemed to be a voluntary prepayment and such payment, to the extent permitted by law, must include the premium required under the prepayment provision or if at that time there is no prepayment privilege, then such payment, to the extent permitted by law, will include a premium for such prepayment of five (5%) percent of the then principal balance.

Closing Date. The loan shall close on such date as shall be mutually satisfactory to Borrower and Alison but in no event later than 60 days from the date of this agreement. In the event that closing of the loan shall not take place by that time, this agreement shall expire and Alison shall have no further obligation hereunder, unless by written notice to Borrower Alison shall extend such time of closing.

Financial Statements. Alison's obligations hereunder shall be subject to receipt and approval of credit reports and financial statements on Borrower and Guarantors (and all principals thereof if not individuals) current to within 90 days of closing. In addition, Alison shall be furnished with balance sheets and statements of income and expense for the Property for the three previous fiscal years, and for each quarter subsequent to the most recent fiscal year. After closing, Alison shall be provided with balance sheets and statements of income and expense on the Property within 45 days after the close of each fiscal year and each interim quarterly period. All such statements shall be certified in a manner satisfactory to Alison by the chief financial officer of Borrower or the certified public accountant who regularly keeps Borrowers books, and by all Guarantors. The failure to furnish such statements or any material error or omission therein shall relieve Alison of any obligation hereunder and constitute an event of default under any loan document executed pursuant to this agreement.